

Vol 3165

No. 16270

United States
Court of Appeals
for the Ninth Circuit

See
Vol. 3164
Vol. 310

EDGAR HAROLD TEAGUE,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
Northern District of California,
Southern Division.

FILE

MAR 16 1959

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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APPEARANCES

ROOS, JENNINGS & HAID,
LESLIE L. ROOS,
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Attorneys for Appellant.

ROBERT H. SCHNACKE,
U. S. Attorney, Northern District of Cali-
fornia;

BERNARD PETRIE,
Assistant U. S. Attorney,
Attorneys for Appellee.

In the United States District Court for the Northern
District of California, Southern Division

Criminal 36232

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDGAR HAROLD TEAGUE,

Defendant.

INDICTMENT

(Violation: 18 U.S.C., Section 659—Theft
From Foreign Shipment.)

The grand jury charges that Edgar Harold Teague on or about March 6, 1957, at San Francisco, Northern District of California, did wilfully steal from a wharf, with intent to convert to his own use, goods which were a part of a foreign shipment of freight and express, to wit, five coils of used copper wire being shipped from San Francisco to Kobe, Japan, and worth more than \$100.

A True Bill.

/s/ STANLEY L. KING,
Foreman.

/s/ LLOYD H. BURKE,
United States Attorney.

Approved as to Form:

/s/ B. P.

Penalty: Imprisonment for not more than 10 years and/or fine of not more than \$5,000.

Bail: \$1,000.

[Endorsed]: Filed July 31, 1958.

[Title of District Court and Cause.]

PLEA

This case came on regularly this day for entry of plea. Bernard A. Petrie, Esq., Assistant United States Attorney, was present on behalf of the United States. The defendant, Edgar Harold Teague, was present in proper person and with his attorney, Leslie Roos, Esq.

The defendant was called to plead and thereupon entered a plea of "Not Guilty" of the offense charged in the Indictment filed herein against him, which said plea was ordered entered.

After hearing counsel, ordered case continued to September 8, 1958, for trial.

[Title of District Court and Cause.]

MINUTE ORDER DENYING MOTION FOR JUDGMENT OF ACQUITTAL

This case came on regularly this day for hearing on motion for judgment of acquittal and for judgment.

Bernard A. Petrie, Esq., Assistant United States Attorney, was present on behalf of the United

States. The defendant, Edgar Harold Teague, was present in proper person and with his attorney, Leslie Roos, Esq. William P. Adams, Probation Officer, was present.

Mr. Roos renewed his motion for judgment of acquittal, which motion was Ordered denied.

Ordered case continued to October 15, 1958, at 9:30 a.m. for judgment.

[Title of District Court and Cause.]

VERDICT

We, the Jury, find Edgar Harold Teague, the defendant at the bar, Guilty as charged in Indictment.

/s/ JOHN J. ZELASKI,
Foreman.

[Endorsed]: Filed September 22, 1958.

United States District Court for the Northern
District of California, Southern Division
No. 36232

UNITED STATES OF AMERICA,

vs.

EDGAR HAROLD TEAGUE.

JUDGMENT AND COMMITMENT

On this 15th day of October, 1958, came the attorney for the government and the defendant appeared in person and with counsel.

It Is Adjudged that the defendant has been convicted upon his plea of Not Guilty, and a Verdict of Guilty of the offense of Violation 18 U.S.C., Section 659—Theft from a foreign shipment (Defendant Edgar Harold Teague, on or about March 6, 1957, at San Francisco, Northern District of California, did wilfully steal with intent to convert to his own use, goods which were a part of a foreign shipment, to wit, five coils of used copper wire being shipped from San Francisco to Kobe, Japan, and worth more than \$100.00)—as charged in Indictment (single count) and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of One (1) Year and pay a fine to the United States of America in the sum of One Thousand Dollars (\$1,000.00).

It Is Adjudged that Eleven (11) Months of the one-year sentence of imprisonment imposed on defendant be and is hereby Suspended and defendant placed on Probation for a period of Eleven (11) Months, said period of probation to commence and run from and after the expiration of the One (1)

Month term of imprisonment to be served by the defendant. Ordered that defendant report as often and in such manner as directed during the probationary period.

Total term of imprisonment: One (1) Month.

Total amount of fine: \$1,000.00.

Total period of probation: Eleven (11) Months.

Ordered that defendant be granted a Five (5) day stay of execution of judgment.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ LOUIS E. GOODMAN,

United States District Judge.

[Endorsed]: Filed and entered October 17, 1958.

[Title of District Court and Cause.]

NOTICE OF APPEAL

1. Appellant is Edgar Harold Teague of 6245 Cypress Street, El Cerrito, California;

2. Appellant's attorney is Leslie L. Roos, of the law firm of Roos, Jennings & Haid, 1100 Mills Tower, San Francisco, California;

3. Appellant was convicted by a jury on September 22, 1958, of a violation of 18 U.S.C., Section

659, theft from a foreign shipment, in that on or about March 6, 1957, at San Francisco, Northern District of California, he did wilfully steal from a wharf, with intent to convert to his own use, goods which were part of a foreign shipment of freight in express, to wit, five coils of used copper wire being shipped from San Francisco to Kobe, Japan, and worth more than \$100.00;

4. Appellant's motion for a judgment of acquittal, renewed following discharge of the jury pursuant to Rule 29(b) was ordered denied on October 10, 1958;

5. Appellant was adjudged guilty as charged and convicted on October 15, 1958, and sentenced to pay a fee of \$1,000 and serve one year in jail of which eleven months was suspended during which defendant was placed on probation.

I, the above-named appellant, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the aforesaid order denying said motion for a judgment of acquittal and from the above-stated judgment.

Dated this 15th day of October, 1958.

/s/ LESLIE L. ROOS,
Appellant's Attorney.

Receipt of copy acknowledged.

[Endorsed]: Filed October 15, 1958.

In the District Court of the United States for
the Northern District of California, Southern
Division

No. 36232

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDGAR HAROLD TEAGUE,

Defendant.

Before: Hon. Albert C. Wollenberg.

MOTION FOR PRODUCTION OF DOCU-
MENTS AND SUPPRESSION OF EVIDENCE

Friday, August 22, 1958

Appearances:

For the Plaintiff:

ROBERT H. SCHNACKE,

United States Attorney; by

RICHARD H. FOSTER,

Assistant United States Attorney.

For the Defendant:

LESLIE L. ROOS, ESQUIRE.

The Clerk: United States versus Edgar Harold
Teague, Motion for Production of Documents and
Suppression of Evidence.

Mr. Foster: Ready for the United States.

Mr. Roos: Ready.

The Clerk: Counsel will please state their appearances for the record?

Mr. Roos: Leslie L. Roos for the defendant and moving party, your Honor.

Mr. Foster: Richard H. Foster, Assistant U. S. Attorney, for the Government.

There are really two matters on in connection with this motion. There is also a motion to produce a statement. Now, I told counsel and I also informed Judge Weinfeld at the last calling of this case that there is no statement. The Federal Bureau of Investigation took none and the defendant executed none.

This morning, however, I showed counsel a diagram drawn by an F.B.I. agent in which the defendant placed an X at one portion thereof. I have assured counsel that I will try to Verifax this diagram for him in our office. I also told him I wasn't very confident of the result since the diagram is in pencil and our reproduction equipment is not, I don't think, sensitive enough to form a very good picture of it. [3*]

Mr. Roos: A photostat at our expense would be all right.

The Court: If you can photostat it, I think that's what you should do.

Mr. Roos: That would be fine, your Honor.

Mr. Foster: I don't say by that that we feel that the motion would be good in any case, I don't concede that, but——

The Court: You're apparently willing to give

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

him a copy of this without further discussion of the matter, so it should be a good copy. No use giving him one you don't think is going to turn out. He says he will pay the expense for photostating it.

Mr. Roos: Thank you, your Honor. On the suppression of evidence, your Honor, possibly you might want to pass it for a few moments, because there will be testimony.

The Court: Well, the Clerk informs me that we are at the end of the calendar, and we can hear it now.

Mr. Foster: There is one other matter. The case is presently set for, I believe it is, September 8th. The reason it was set on that date would be because the American President Lines ship on which several of the witnesses are stationed was due to arrive in San Francisco and be in port on that date. It now appears that the ship will not be here on that date and we would request that the matter go over to September 15, that is a week later, because the ship will be in [4] and the witnesses will be available.

It is my understanding that counsel originally, when the matter was originally set, requested a later date than the one that was set, but it was set on the 8th because of the fact that the witnesses would be here on that date.

Mr. Roos: We have no objection.

The Court: All right, we will reset it at this time to the 15th.

Mr. Roos: Mr. Middleton.

ROY SANFORD MIDDLETON

called as a witness by the Defendant, being first duly sworn, thereupon testified as follows:

The Clerk: Please state your name to the Court, sir.

The Witness: Roy Sanford Middleton.

Direct Examination

By Mr. Roos:

Q. What is your address, Mr. Middleton?

A. 1837 Burbank Avenue, Richmond.

Q. What is your business or occupation?

A. Retired police officer.

Q. How long have you been retired?

A. A year the first of July.

Q. That would be about July, 1957?

A. '57. [5]

Q. What was your occupation on or about March 7, 1957?

A. I was an active police officer with the City of Richmond, assigned to the Inspector's Bureau handling the Pawnshop and Junk Yard Details.

Q. I see. Did you, on March 7, 1957, have anything to do with five coils of used copper wire that are the subject of the indictment in this case?

A. I did.

Q. What did you do, what was your connection with them?

A. On that morning I happened to be checking the junk yard at No. 8-15th Street, known as the Richmond Iron and Metal. By checking them, I

(Testimony of Roy Sanford Middleton.)

refer to noting purchases they had made on the previous day and on that particular morning.

As I was about to leave the place, I noticed a car parked in the street and the proprietor, Mr. William Press, was standing there discussing a matter with a young fellow which I learned to be the price of a sale of used copper wire. And I observed five coils of wire in this new station wagon that the young man was driving, partially covered with a piece of canvas or painter's drop cloth.

I asked the young fellow, a James Daniels, where he obtained the wire and he said it belonged to his father, or stepfather. I asked him if he had authority to sell the wire and he said he did, authority given to him by his stepfather, and that he had been in Oakland attempting to sell it, but couldn't [6] get the price that his father insisted that he get for the wire. So that's why he appeared there in Richmond.

In looking over the wire through the window of the car, I observed a shipping tag on the wire and being wire that would normally be used by a utility company on power service lines for home or light industry, it appeared to me that he had something in his possession that he didn't have title to to sell.

So I talked to him and asked him if there was anyone at his home, and he said his mother was. I asked him if he would be willing to make a phone call so that we could verify whether or not he had permission to sell the wire.

In response to a phone call, a woman answered

(Testimony of Roy Sanford Middleton.)

and said that she was a Mrs. Teague, the wife of Edgar Teague and that the boy attempting to sell the wire was a son by a former marriage and that his father had asked him to take this wire out and sell it for him and that it had been stored in the garage prior to the time he removed it that morning.

I told the young fellow I wasn't interested in making an arrest in his behalf, but I would want to confiscate the wire and hold it for safe-keeping until we could determine proper ownership, which he agreed to do, and drove his car up to the Hall of Justice and assisted me in unloading it and storing it in the basement in the property vault, for which he has a receipt. [7]

I instructed him to tell his father where the wire was located and have his father come in and talk to me about it.

In the meantime I checked with the various companies, particularly the Pacific Gas & Electric Company. They sent two representatives down there and looked the wire over, stated that it could have been some that was salvaged from their company, or other companies handling similar wire, but apparently it had been disposed of to some metal company which in turn was shipping it to some foreign country, from the tags on it, presumed to be for export.

I then got in contact with the American President Lines after I found that Mr. Teague was employed by them as a painter, and talked to Captain Sledge, gave him a description of the wire and a descrip-

(Testimony of Roy Sanford Middleton.)

tion of the shipping tag attached thereto, and he said he would check further on it.

I heard from Mr. Sledge later, stating——

Mr. Foster: Your Honor, I haven't objected to this narrative form of testimony because I think that the facts of the case are coming out, but I think probably we are getting into an area now that is probably not germane to the motion and has nothing to do with the motion to suppress.

The Court: I guess that is correct. We are going down the block somewhere.

Q. (By Mr. Roos): You had no search warrant at any time to take this wire, did you? [8]

A. No, sir.

Q. You never at any time arrested the young man, Jim Daniels? A. No, sir.

Q. You took the wire out of the automobile yourself, did you not?

A. I removed part of it, yes.

Q. Are you an expert in the various uses of copper wire?

A. I am familiar with some sizes and uses of wire, but I wouldn't consider myself an expert.

Q. I presume that there is nothing entirely unusual about used copper wire being sold to a scrap or junk metal dealer, is there?

A. Unusual if attempted to be sold by individuals, because various companies don't let it get into the hands of individuals, it is usually handled through metal dealers.

Q. That isn't true of all wire, is it?

(Testimony of Roy Sanford Middleton.)

A. All public—all wires and metals used by public utilities.

Q. In your opinion this wire was for the use of a public utility? A. Had been.

Q. Pardon?

A. Apparently had been used by a public utility.

Q. You just determined that since this incident, didn't you? [9] A. I did not.

Q. You didn't know at the time you first saw this wire that it had been used or was the type of wire used by a public utility?

A. Yes, I did, from past experience.

Q. Other than the fact that this was the type of wire that in your opinion was used by a public utility, what else made you feel that you should take some interest in the sale of the wire to the junk dealer?

A. Primarily because the young man, Mr. Daniels, who was attempting to dispose of it through sale to the junk yards, was unable to tell me where he got it, where it come from, who was the rightful owner.

Q. He told you it belonged to his father, didn't he?

A. Yes, but he didn't know himself where it came from or who had it—where he got it originally.

Mr. Roos: I think that's all.

(Testimony of Roy Sanford Middleton.)

Cross-Examination

By Mr. Foster:

Q. How long were you on the Richmond Police Department, I think you called it the Junk Detail?

A. Approximately ten years.

Q. And during that time did you have occasion to cover the cases which had to do with copper wire?

A. That is right. [10]

Q. And on how many occasions would you say during that ten-year period do you think that you came into contact with cases involving utility wire of the kind that is involved here, could you estimate at all?

A. Oh, I'd say it probably would average at least two or three times a month, maybe more.

Q. During that time you became familiar, I take it, with the various kinds of individuals and corporations which disposed of that kind of material?

A. That's right.

Q. Is it unusual for an individual to sell copper utility wire? A. That is right.

Q. What companies are the usual sellers or disposers of that kind of material?

A. Lerner Brothers, in Oakland; the National Iron and Metal, in Oakland; Lakeside Iron and Metal, also in Oakland—

Q. Could you tell us what kind of wire that is; is it utility wire, is that what it is called?

A. This particular wire, as I recall, there was some what they term as a No. 4 semi-hard drawn

(Testimony of Roy Sanford Middleton.)

bare copper wire, which is used normally on about a 220-volt line, or 440-volt. That's light service to various small industries, light industry items, and one thing or another. Some was of a smaller size, some of it was of a little larger size, all of which was bare, [11] majority soft, hard drawn, or semi-hard drawn wire.

Q. Was that the kind of wire that would be used in an individual's home? A. No, sir.

Q. Now, prior to your conversation with Mr. Daniels on the 7th of March, had you had any conversations with or any liaisons with the F. B. I. or any other Federal agency?

A. None whatsoever.

Q. Had they undertaken to conduct—ask you, or had you undertaken any investigation on their behalf? A. None whatsoever.

Q. When was the first time, to your knowledge, this matter was ever brought to the attention of the Federal Bureau of Investigation or any other Federal investigative agency?

A. I believe it was approximately two or three days later from the time that I confiscated the wire that I was informed that such action would be taken by Agent Barthol of the Federal Bureau of Investigation.

Q. You mentioned that you saw a shipping tag on the wire. Was that through the window of the car?

A. Originally, and then later at the Hall of Justice.

(Testimony of Roy Sanford Middleton.)

Q. What was said, as best you can recall on that shipping tag?

A. That was a small tag attached originally to the coil of wire by a small piece of steel wire and on the tag, I have [12] forgotten all the numbers that was on it, but it had the word Kobe and I believe in the right-hand corner it had a light stamp number of 714, to the best of my knowledge.

Q. Was American President Lines on it?

A. There was not, no.

Mr. Foster: No further questions.

Mr. Roos: No further questions.

The Court: All right, sir.

(Witness excused.)

Mr. Roos: Mr. Burroughs.

FRANKLIN S. BURROUGHS

called as a witness by the Defendant, being first duly sworn, thereupon testified as follows:

The Clerk: Please state your name to the Court.

The Witness: Franklin S. Burroughs.

Direct Examination

By Mr. Roos:

Q. Mr. Burroughs, you are a special agent of the F.B.I., is that correct? A. Yes.

Q. Were you such on March 7, 1957?

A. Yes.

Q. This copper wire that we have been talking about, did you handle that investigation?

(Testimony of Franklin S. Burroughs.)

A. Yes; I did. [13]

Q. Did you ever obtain a search warrant to obtain this copper wire from the automobile that was described by Mr. Middleton? A. No.

Mr. Roos: That's all.

Cross-Examination

By Mr. Foster:

Q. Mr. Burroughs, when was the first time you knew of the existence of or had anything to do with the copper wire?

A. Approximately March 8 or 9, I am not certain which it is.

Q. That is two days after the 7th?

A. Of 1957, yes.

Q. Did you, to your knowledge or any other Federal investigation agency or agent, request the police officer who has just testified to secure the wire, or conduct any investigation concerning therewith? A. None whatsoever.

Q. Do you have the wire now, Mr. Burroughs?

A. It's in the custody of the U. S. Marshal.

Q. In this building? A. Yes, sir.

Q. Did you or agents of the Federal Bureau of Investigation obtain the wire?

A. Yes; we did. [14]

Q. From whom?

A. From the Richmond Police Department.

Q. You recall about when?

A. It was approximately two weeks ago that we received it from the Richmond Police Department.

(Testimony of Franklin S. Burroughs.)

Q. That is in 1958? A. Yes, sir.

Mr. Foster: No further questions.

Redirect Examination

By Mr. Roos:

Q. In other words, Mr. Burroughs, the Richmond Police Department was acting as your agent in retaining the wire from March 7 until two weeks ago, is that correct?

A. No; the wire was left in the property room, where it was originally placed by the Sergeant.

Q. At your request?

A. They had already placed it there and we left it there until about two weeks ago when we decided to bring it over here to San Francisco.

Q. In other words, they were holding it for you in Richmond, is that correct?

A. It wasn't booked to the United States Marshal, but I guess you could say they were holding it for us at that time after we had gotten into the case.

Q. On or about March 7 or 8? [15]

A. That's correct.

Recross-Examination

By Mr. Foster:

Q. Mr. Burroughs, was it March 7 that you got in the case or was it later than that?

A. No; it was about March 8 or 9, one or two days after this incident.

(Testimony of Franklin S. Burroughs.)

Q. In other words, at the time of this alleged, or the illegal search and seizure, the F.B.I. had nothing to do with the wire, or nothing to do with the investigation? A. That is correct.

Mr. Roos: I have no further questions.

That is all for the defendant, your Honor.

Mr. Foster: Your Honor, please, I think that this motion should be denied for—well, a good number of reasons.

Mr. Burroughs, could you take the stand again? There is one fact that I don't think is plain on the record, and I think it should be included in the record.

FRANKLIN S. BURROUGHS

recalled as a witness, having been previously duly sworn, testified further as follows:

Further Cross-Examination

By Mr. Foster:

Q. What is the name of the defendant in this case? [16] A. Edgar Harold Teague.

Q. Did your investigation determine from whom the wire was taken on March 7?

Mr. Roos: That assumes a fact not in evidence, your Honor, a conclusion that it was taken from anybody.

Q. (By Mr. Foster): Who was the young man that was discussed in evidence here?

A. James Daniels.

Q. That's not the defendant? A. No, sir.

(Testimony of Franklin S. Burroughs.)

Q. Do you know if there is any relationship between them?

A. Yes; James Daniels is the stepson of the defendant.

Mr. Foster: No further questions.

The Court: All right.

Mr. Roos: Your Honor, please, to obviate one objection, I think I neglected, maybe it came out indirectly, to directly establish ownership of the automobile. I think there is no question, you will stipulate the automobile was owned by the defendant.

Mr. Foster: I think if you want that part in the record, you should establish it that way. I don't know.

Mr. Roos: Mr. Middleton. [17]

ROY SANFORD MIDDLETON

recalled as a witness by the defendant, having been previously duly sworn, testified further as follows:

Further Direct Examination

By Mr. Roos:

Q. Mr. Middleton, I assume in your investigation of the automobile and the wire at 8-15th Street in Richmond on March 7, 1957, you determined who the automobile was registered to, did you not?

A. On my question to Mr. Daniels as to the ownership of the automobile, he informed me that it was a car owned by his stepfather, Mr. Teague.

(Testimony of Roy Sanford Middleton.)

Q. I believe it was a new, brand new 1957 Chevrolet station wagon?

A. It was a brand new station wagon, I believe a '57, yes.

Q. Did you check the registration?

A. I did not.

Q. You accepted the boy's statement?

A. I accepted his statement, because I had no intention of impounding the automobile.

Mr. Roos: Thank you.

The Court: All right, that's all.

(Witness excused.)

Mr. Roos: We can establish it if there is any question about it, your Honor, beyond any doubt.

Certificate of Reporter

I (We), Official Reporter(s) and Official Reporter(s) pro tem, certify that the foregoing transcript of 18 pages is a true and correct transcript of the matter therein contained as reported by me (us) and thereafter reduced to typewriting, to the best of my (our) ability.

/s/ P. D. BARTON.

[Endorsed]: Filed October 21, 1958. [18]

The United States District Court, Northern District
of California, Southern Division

No. 36,232

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDGAR HAROLD TEAGUE,

Defendant.

Before: Hon. Louis E. Goodman, Judge.

TRANSCRIPT ON APPEAL

Appearances:

For the Government:

ROBERT H. SCHNACKE, ESQ.,

United States Attorney, by

BERNARD A. PETRIE, ESQ.,

Assistant U. S. Attorney.

For the Defendant:

LESLIE L. ROOS, ESQ., and

CHARLES M. HAID, JR., ESQ.

Tuesday, September 16, 1958—10:00 o'Clock

(A jury was duly impaneled and sworn to
try the cause.)

The Court: Now, Mr. Petrie, do you wish to
make an opening statement?

Mr. Petrie: Just a brief one, if I may, your
Honor.

Mr. Roos: Your Honor, possibly for the convenience of two witnesses I have subpoenaed here today—they won't be needed today—I wonder if they could deliver their records to the Clerk at this time to be marked for identification and then they could be excused, if your Honor would instruct them to return?

The Court: Is there any objection to that?

Mr. Petrie: No, your Honor.

The Court: You just want to call them up?

Mr. Roos: Mr. Wheeldon.

The Court: What are these records?

Mr. Roos: They are some records of the American President Lines, your Honor, dealing with this matter.

Mr. Petrie: I take it they are just being marked for identification?

Mr. Roos: Marked for identification.

The Court: You are going to have to have the witness come back anyhow. [2*]

Mr. Roos: Yes, I will have him come back, Judge, but I would just like to have the records marked for identification at this time.

The Court: You mean so the witness won't have to wait around?

Mr. Roos: So the witness won't have to wait around.

The Court: All right.

Mr. Roos: Your Honor, there are also some payroll records—

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

Mr. Petrie: Your Honor, the witness will have to come back to talk about the documents. I don't see what is to be gained by it.

Mr. Roos: I would like the opportunity of examining the documents, to be very frank with you.

Mr. Petrie: I have got no objection to that, your Honor, if Mr. Roos wants to look at the documents.

The Clerk: Defendant's Exhibit A for identification.

(American President Lines documents were marked Defendant's Exhibit A for identification.)

The Court: When do you want the witness to come back?

Mr. Roos: Would it be satisfactory if I call Mr. Teige and let you know? [3]

Mr. Wheeldon: Yes, that will be quite satisfactory.

The Court: We are just doing this, Mr. Witness, so that you don't have to wait around.

Mr. Wheeldon: Thank you very much.

The Court: The documents will be in the custody of the Court and will be returned to you.

Mr. Wheeldon: Thank you very much.

The Court: What else have you got?

Mr. Roos: I think there is Mr. Teige. Are there any other records here?

Mr. Petrie: Your Honor, this is irregular. I have tried to be accommodating. I think the Govern-

ment should now go forward in this case with its witnesses and then Mr. Roos will be able to——

Mr. Roos: Evidently they are right here now. Mr. Teige is attorney for American President Lines. I noticed him in court as a witness. He has been subpoenaed.

The Court: Did you subpoena him?

Mr. Roos: Yes, these are the payroll records?

Mr. Teige: These are the compensation records.

The Court: Have you any objection to leaving them here and then coming back?

Mr. Teige: All right.

The Court: We will mark them in the case and keep them in the custody of the Court so you won't have to [4] wait around.

Mr. Teige: Okay. We will use the latest one Friday.

The Court: I imagine you will be back here this afternoon or tomorrow. Just mark it as an exhibit. Counsel will notify you when to come.

The Clerk: Defendant's Exhibit B marked for identification.

(Compensation records of American President Lines marked Defendant's Exhibit B for identification.)

The Court: There has been no evidence presented before the jury. This is just a procedure to mark some documents that may or may not be used later.

Now, you wish to make your opening statement?

Mr. Petrie: Yes, your Honor.

OPENING STATEMENT ON BEHALF OF
THE GOVERNMENT

Mr. Petrie: May it please the Court, Mr. Roos, ladies and gentlemen of the jury:

At this stage of a criminal case, Government counsel has an opportunity to make an opening statement to you. The purpose of that is to explain to you the nature of the offense and to give you some preview, as it were, of the evidence to come so that you can follow it more closely, because, of course, you must decide the case on the evidence. After I finish, [5] Mr. Roos will have an opportunity to make an opening statement to you for the defense, or he may reserve his statement until he opens his case after the Government's case.

The charge here is theft from a foreign shipment, a shipment going from the United States to Japan.

I should like to read once again to you the indictment so that you will have the language of it clearly in mind as you listen to the Government's witnesses.

"The Grand Jury charges that Edward Harold Teague, on or about March 6, 1957, at San Francisco, Northern District of California, did wilfully steal from a wharf with intent to convert to his own use goods which were part of a foreign shipment of freight and express, to wit: Five coils of used copper wire, being shipped from San Francisco to Kobe, Japan and worth more than One Hundred Dollars."

That is the indictment. That is the charge before you.

At a later time in the case, after argument, Judge Goodman will instruct you on the law and he will instruct you on the elements of the offense of theft. We needn't anticipate that now.

The witnesses will show that there is a company called the Federated Metals Company in San Francisco. That company, sometime before March 6, 1957, sold 186 coils of used copper wire weighing about 22,000 pounds to a broker in New York. [6] That broker later, or at about the same time, in turn sold the wire to a company in Japan called the Tatsuta Company. The wire was forwarded mechanically by a freight-forwarding agent in San Francisco.

And so there came a time on March 6, 1957, when an employee of Federated Metals Company got the wire ready for shipment. That employee will appear before you—his name is Calkins—and tell you what he did. He will explain that he tagged each coil in that shipment with letters and numbers to designate the shipment and to designate the particular coil in the shipment that was being sent to Japan.

The coils were loaded on a truck of an independent trucker from Thompson Brothers. They were carried to the pier maintained by the American President Lines. At that point a checker, working for American President Lines—he will also appear before you—counted the coils off the truck and found that there were still 186 coils. Those coils were stored at the end of the pier.

The evidence will show you also that this defend-

ant worked in a paint shop quite close to where these coils were stored. You will see that the defendant was a painter working for American President Lines; that he was what is called a leader man. He was the leader of a paint group or gang that worked down there at the piers painting ships and doing other things. [7]

So the coils were unloaded on March 6, 1957. They were checked in, the 186 coils. Then the evidence will show that five of those coils were taken from the shipment. We have the coils here in court. We will bring them before you, first marking them for identification through an agent of the Federal Bureau of Investigation who assumed the custody of them. Then Mr. Calkins will be called to identify them and identify one of the tags that were recovered; and you will see from the evidence that on March 7, 1957, one day after the coils were delivered to the dock and on the same day that the entire shipment went out to Kobe, Japan, the defendant's stepson, a person by the name of Daniels, tried to sell those coils and inquired about the price of those coils with a scrap metal dealer in Richmond. That dealer will be produced. The Government will call Mr. Daniels, also, to describe how he came by the coils.

If we satisfy you that these five coils that we have here are five of the 186 coils, as I think we will, I think the rest of the evidence will satisfy you circumstantially that this defendant, sometime during the evening of March 6, 1957, took five of these

coils with the intent to convert them to his own use, took them away from the dock and gave them to his stepson to dispose of them. If the evidence shows that, as I expect it will, the Government will ask you to return a verdict of guilty. [8]

The Court: Members of the jury, we will take a brief recess now. We try to take a recess in mid-morning and mid-afternoon. The bailiff will show you where the jury room is and that is where you will assemble when you are not in the courtroom.

When you are away from the courtroom, you must not talk about the case among yourselves or let anybody else talk to you about the case, nor should you express or form any opinion until this matter finally reaches your hands for decision. We will take a brief recess now.

(Recess.)

The Court: Proceed.

Mr. Petrie: Your Honor, during the recess I asked the Clerk to mark that map on the blackboard as Government's Exhibit 1 for identification. Mr. Roos, I believe, is agreeable to our using that, your Honor.

Mr. Roos: Yes, I think it appears to be a reasonable facsimile of the area.

Mr. Petrie: So we will call the witness.

The Clerk: Plaintiff's Exhibit 1 for identification.

(The map referred to was marked Plaintiff's Exhibit 1 for identification.)

Mr. Petrie: We will explain the map and develop the map. It is a picture of the pier area and some of the surrounding streets. [9]

Mr. Barthol.

Mr. Roos: May I at this time move that any witnesses other than the witness on the stand be excluded?

The Court: Have you got witnesses here?

Mr. Petrie: Several.

The Court: All right. All the witnesses on both sides of this case who have been subpoenaed here will please remain outside the courtroom—the bailiff will show you where to go—until your names are called, except the witness who has just been called.

Mr. Petrie: Your Honor, I don't think Mr. Burroughs will be a witness. He is an agent of the Federal Bureau of Investigation who sits here on the front row, who is assisting me with the trial. In any event, we ask that he be permitted to stay in the courtroom.

The Court: Very well.

Mr. Petrie: Mr. Barthol.

ROBERT G. BARTHOL

called as a witness on behalf of the Government, being first duly sworn, testified as follows:

The Clerk: Will you please state your name to the Court and to the jury?

The Witness: My name is Robert G. Barthol. [10]

(Testimony of Robert G. Barthol.)

Direct Examination

By Mr. Petrie:

Q. What is your occupation, Mr. Barthol?

A. I am a Special Agent of the Federal Bureau of Investigation.

Q. How long have you held that position?

A. Approximately sixteen and a half years, sir.

Mr. Petrie: I will ask that the five coils of wire be marked Government's Exhibit 2 for identification.

The Clerk: Plaintiff's Exhibit 2 for identification.

(The five coils of wire were marked Plaintiff's Exhibit 2 for identification.)

Q. (By Mr. Petrie): Mr. Barthol, will you step down and examine Government's Exhibit 2 for identification and tell us if you can identify it?

A. Yes, sir, I can.

Q. Return to the stand and tell us what that exhibit is and where you first saw it.

A. The exhibit is five coils of copper wire which I first saw in the property room of the Richmond, California, Police Department.

Q. On what date?

A. I first saw it on March 11, 1957.

Q. Did you ever weigh the wire?

A. Yes, sir, I did.

Q. When? [11] A. On April 8, 1957.

Q. Where?

(Testimony of Robert G. Barthol.)

A. At the property room of the Richmond Police Department.

Q. How much did it weigh?

A. 531 pounds.

Q. Did there come a time when you——

Mr. Roos: Just a minute. I understood, Mr. Petrie, that we have a stipulation that at my request and in the presence of Agent Burroughs of the F.B.I., it was weighed by a public weighmaster last Friday and weighed 460 pounds.

Mr. Petrie: That may be evidence, your Honor; there is no stipulation. Mr. Roos is 100% wrong about any stipulation. We did not enter into any stipulation.

Mr. Roos: Didn't you tell me over the phone, Mr. Petrie, that you would stipulate the public weighmaster's weight was correct?

Mr. Petrie: Your Honor, Mr. Roos called me and asked me if he could take the wire out.

Mr. Roos: All right; if that is the way it is, that is all right. I just wanted to know how this trial is going to go, your Honor.

The Court: Well, now, let's not make arguments and engage in discussion among yourselves. If you have anything to say, say it to the Court.

Mr. Roos: Your Honor, there was a stipulation—— [12]

The Court: Go ahead; ask the next question. It is not pertinent to the inquiry here. All that was asked of the witness was, did he weigh it and how

(Testimony of Robert G. Barthol.)

much did it weigh. No occasion for anybody getting excited over that.

Q. (By Mr. Petrie): Did there come a time when you took the wire from the Richmond Police Department, Mr. Barthol?

A. Yes, sir, on August 14th of this year, 1958, I brought the wire from the Richmond Police Department to the United States Marshal's office in this building.

Q. And it was brought from the United States Marshal's office this morning to court; is that true?

A. Yes, sir.

Q. With whom did you have contact in the Richmond Police Department, with what officer?

A. Inspector Roy Middleton.

Mr. Petrie: I have nothing further.

The Court: Any questions?

Mr. Roos: Yes, your Honor.

Cross-Examination

By Mr. Roos:

Q. Mr. Barthol, were you the agent in charge in the investigation of this entire matter?

A. No, sir.

Q. Who was?

A. There was no agent in charge; Mr. Burroughs and myself [13] both investigated the case.

Q. You were both jointly in charge?

A. Yes, sir.

Q. Are you an attorney, Mr. Barthol?

A. No, sir; I am not.

(Testimony of Robert G. Barthol.)

Q. And I presume you have testified for the Bureau in many, many cases, have you?

A. Yes, sir.

Q. And you have investigated many, many cases?

A. Yes, sir.

Q. Now, getting back to this wire, were you present when that wire was weighed, I believe last Friday, by Lyons Van & Storage, Certified Public Weighmasters? A. No, I was not.

Q. Was your colleague, Mr. Burroughs, present at that time? A. I don't know.

Mr. Roos: At this time I have no further questions. I presume that Mr. Barthol will be available if I wish to recall him.

Mr. Petrie: He will be. Thank you, Mr. Barthol.
Mr. Teller.

Your Honor, may I apologize for this oversight? There is one other item I want to introduce through Mr. Barthol. It will only take a moment. May I have him recalled before proceeding? [14]

The Court: You want him before this next witness?

Mr. Petrie: Yes, your Honor.

The Court: Just have the witness remain.

Redirect Examination

By Mr. Petrie:

Q. Mr. Barthol, at the time you secured the wire from the Richmond Police Department, did you secure any other item?

A. No, not at that time, sir.

(Testimony of Robert G. Barthol.)

Q. Some time before the time you took the wire?

A. Yes, sir; I did.

Q. What was that item?

A. A shipping tag that had been on the wire.

Mr. Roos: I will ask that the last part of the answer go out as the opinion and conclusion of the witness.

The Court: It may go out.

Q. (By Mr. Petrie): Do you have the tag that you got from Officer Middleton?

A. Yes, sir (producing document).

Mr. Petrie: May the tag be marked Government's Exhibit 3 for identification, your Honor?

The Clerk: Plaintiff's Exhibit 3 marked for identification.

(The shipping tag referred to was marked Plaintiff's Exhibit 3 for identification.)

Q. (By Mr. Petrie): Is the tag that you just handed [15] me that is becoming Government's Exhibit 3 for identification a tag that you took from Officer Middleton?

A. It was from Sgt. Olin of the Richmond Police Department.

Q. When did you take that tag, Mr. Barthol?

A. On October 25, 1957.

Q. Was that the first time that you saw the tag?

A. No; I had seen the tag previously.

W. When did you first see the tag?

A. On March 11 of 1957.

Q. Did Officer Middleton show you the tag on

(Testimony of Robert G. Barthol.)

March 11th? A. Yes, sir, he did.

The Court: Any other questions?

Mr. Petrie: That is all.

The Court: Any questions, Mr. Roos?

Recross-Examination

By Mr. Roos:

Q. Mr. Barthol, there is no question that this wire that is here in court was the same wire that you saw over there in Richmond and brought over to the U. S. Marshal's Office, is there?

A. No, sir.

Q. And the same quantity? A. Yes, sir.

Mr. Roos: No further questions.

(Witness excused.) [16]

WILLIAM I. TELLER

called as a witness by the Government, being first duly sworn, testified as follows:

The Clerk: Please state your name to the Court and jury.

The Witness: William Isadore Teller.

Direct Examination

By Mr. Petrie:

Q. What is your occupation, Mr. Teller?

A. Purchasing Agent.

Q. For what company?

A. Federated Metals Division, American Smelting & Refining Company.

(Testimony of William I. Teller.)

Q. Where are your offices?

A. Well, we are international, but the office here in San Francisco is 1901 Army Street.

Q. And that is where you work, is it not, sir?

A. Right.

Q. What are your duties generally?

A. General duties are buying the non-ferrous materials required for our operations throughout the country.

Q. Did you bring with you this morning certain shipping records pursuant to subpoena?

A. Yes, I did.

Q. May I have those? [17]

A. (The witness handed documents to counsel.)

Mr. Petrie: May these be marked, your Honor, as Government's Exhibit 4 for identification?

The Clerk: Plaintiff's Exhibit 4 marked for identification.

(Records of Federated Metals were marked Plaintiff's Exhibit 4 for identification.)

Q. (By Mr. Petrie): Did there come a time, Mr. Teller, in or before March, 1957, when your company sold a quantity of copper wire—used copper wire? A. Yes, we—

Q. To a broker in New York called Brandeis, Goldschmidt & Co.? A. Correct, sir.

Q. And when was the contract made with the New York broker?

A. If my memory holds me right, January 15, 1957.

(Testimony of William I. Teller.)

Q. Is the contract among the papers that is Government's Exhibit 4 for identification?

A. Right, yes, sir.

Q. When was the material actually shipped by Federated? A. March 6th of '57.

Q. I show you Government's Exhibit 4 for identification. Are those the shipping papers which you have just handed me? A. Yes, sir.

Q. Will you tell us what papers you have there, just [18] briefly, Mr. Teller?

A. The top paper is the contract made by our New York office with Brandeis, Goldschmidt & Co., and that is dated January 15th; and the second is the actual shipping charge sheet that we make at the San Francisco office, showing the amount of material that was shipped and the weight and the price, and then on that goes the rough packing list made downstairs in the plant, the bill of lading moving it from the plant to the dock——

Q. Does that bill of lading show how much wire was sold and sent out by Federated?

A. Yes, in this particular shipment.

Q. How much wire?

A. 186 coils, weighing 22,000 pounds net.

Q. Were the coils weighed by Federated before they were sent out? A. Yes, sir.

Q. What evidence of that do you have among the papers?

A. We have a certification made by our public weighmaster certifying to the number of coils, the

(Testimony of William I. Teller.)

gross and net weight of the materials, the date it was shipped and the boat that it was being moved on.

Q. What boat was it being moved on?

A. SS President Taylor.

Q. Who in your company prepared the material for shipment? [19]

A. Well, it starts off with a bunch of workers down in the plant putting it together, and then Mr. Blackmore and Mr. Calkins, who are two receiving scale men, would actually do the weighing across the scale and seeing to it that the marks were adhered to and so forth.

Q. Can you tell us where your company got the wire?

A. We have many sources of scrap; all I could do was guess as to where I thought this came from.

The Court: I don't think this is material.

Mr. Petrie: We will pass it, then, your Honor, if the witness can't say.

Q. Can you tell us what the sales price was, Mr. Teller, to Brandeis, Goldschmidt?

A. Yes——

Mr. Roos: We object to that as incompetent, irrelevant and immaterial.

Mr. Petrie: It is some evidence of value; the jury has got to find value.

Mr. Roos: What it was sold for in New York doesn't establish its value, or in Japan, or wherever it was sold.

The Court: It might be some evidence of value here. How was it sold, f.o.b.?

(Testimony of William I. Teller.)

The Witness: F.A.S.

The Court: F.A.S.? [20]

The Witness: Delivered to the boat, actually.

Q. (By Mr. Petrie): What do those terms mean, Mr. Teller?

A. Free alongside the ship.

The Court: So you have a price at which the wire was sold, delivered to the boat?

A. That is correct, sir.

Q. (By Mr. Petrie): Did your company then pay freight to the boat?

A. That is correct.

Q. Pay the trucking company? A. Yes.

Q. What was the selling price to Brandeis, Goldschmidt & Co.?

A. \$32.75 per hundred pounds.

Q. That is about 32¾ cents per pound?

A. Correct.

Q. What was the material, Mr. Teller? Can you describe it to us?

A. Well, this shipment consisted of coils of bare copper wire, which would be in accordance with the National Waste Material Dealers Association for what we call "berry," which is the code name for No. 1 copper, which is free of all foreign contamination other than copper itself.

Q. It was used wire, was it not?

A. That is correct, sir. [21]

Q. For what purposes might it be used, the used copper?

A. Well, speaking for our own plant, we use it

(Testimony of William I. Teller.)

in blending and also to make—that is blending copper wire with scrap in order to come up with a specific type of ingot for our Tacoma smelter which will make eletrolytic copper wire out of it.

Q. Is used wire in that condition sometimes melted down? A. Yes, sir.

Q. And purified to recover the copper?

A. Yes, sir.

Q. Does your company engage in any such procedure as that, melting down?

A. Well, our Tacoma smelter has an electrolysis process for removing pure copper and putting it back into electrolytic form for use by the wire mills, and of course we in San Francisco use the blending operation actually; we don't refine, actually; we just take the material and mix it together in order to come up with a specification.

Q. How does your company from time to time determine the market value or price of used copper?

A. Generally speaking, it is a supply and demand situation based on electrolytic copper price. Normally, under normal market conditions, No. 1 copper would command a price somewhere between four and five cents under electrolytic copper.

Q. So your starting point is the price of electrolytic copper? [22] A. Yes, sir.

Q. And by electrolytic copper, do you mean the new, unused copper?

A. The wire bar shape, as we call it.

Q. Have you, in response to my request, tried to determine what the market value of used copper wire was on March 6, 1957—used copper wire such

(Testimony of William I. Teller.)

as the wire that you shipped out on the order of Brandeis, Goldschmidt?

A. Well, I tried, but all I was able to come up with was the electrolytic price. We had a falling market from the first part of fifty—last part of '56, if my memory holds me right, through '57 up to date, but we were able to establish the electrolytic price through the period that we made the sale and made the shipment.

Q. What was the electrolytic price during that period? How were you able to establish that?

A. We get a market quotation sheet from our New York office sent in by wire, which tells us what all your prime metals—tin, copper, lead and so forth——

Q. I see you looking at a packet of small sheets. Are those market quotation sheets?

A. Yes, sir.

Mr. Petrie: May these be marked, your Honor, Government's Exhibit 5 for identification?

The Clerk: Plaintiff's Exhibit 5 marked for identification. [23]

(The market quotations referred to were marked Plaintiff's Exhibit 5 for identification.)

The Court: All you are trying to establish here, and it has taken you a long time, is what the market value of this wire was; is that right?

Mr. Petrie: That is right, your Honor.

The Court: Are there any quotes on second-hand

(Testimony of William I. Teller.)

wire—on copper wire of this type, any quotes on scrap?

The Witness: Well, we tried to establish it by the American Metal Market, which usually shows those, but unfortunately, our files do not go back that far; we only keep them three months.

The Court: I see. This is back in the spring of '57.

Mr. Petrie: That's right, your Honor. But the witness has said that the price of this used wire is about 4c, did you say, less than the electrolytic?

A. Yes, sir.

The Court: Is that common—

The Witness: That is common on a pretty static market where the prices aren't fluctuating too much.

The Court: So that you can use the quotes on the electrolytic material and drop down a certain number of cents a pound and you get the scrap price; is that correct?

The Witness: That is correct, your Honor. [24]

The Court: What is it?

Mr. Petrie: That is what I was coming to.

The Witness: Today?

Q. (By Mr. Petrie): No, on March 6, 1957.

The Court: As near as you can say, what was it?

The Witness: I checked those quotation sheets. At the time of the sale, June 15th—I beg your pardon, January 15th, the market quotation was 36c electrolytic.

(Testimony of William I. Teller.)

The Court: And what did that make it in scrap?

Mr. Roos: I think, your Honor, the witness is confused now. I think the date we are maybe concerned with here is March 6, 1957.

Mr. Petrie: Your Honor, the witness started from the date of the contract, which was January 15, 1957.

Mr. Roos: That is irrelevant here.

Mr. Petrie: No, that is his starting point.

The Court: Well, can you shorten it up for us, and tell us on the basis of whatever quotes you have there as to electrolytic material in March of 1957, what it would be for scrap?

Move this along, gentlemen.

Mr. Petrie: I am trying to, your Honor.

The Court: This is a big field in which there can't be any area of dispute. Let's get it finished with quickly. [25]

The Witness: The electrolytic copper price—this would run through March 6th—was 32c a pound, and I would roughly guess at that time the value would be between 27 and 28 cents a pound for scrap.

Q. (By Mr. Petrie): To what point in Japan did the shipment of 186 coils of wire go, Mr. Teller?

A. The shipment was marked for Kobe.

Mr. Petrie: I have nothing further from this witness.

(Testimony of William I. Teller.)

Cross-Examination

By Mr. Roos:

Q. Isn't there a newspaper, the name of which escapes me, published daily which shows dealers' prices for scrap metal, Mr. Teller?

A. Yes, American Metal Market. I was trying to——

Q. Did you look at the American Metal Market for March 6, 1957—or March 7, 1957?

A. No, sir, as I say, we don't have it that far back.

Q. They are available, aren't they?

A. They could be. I wouldn't know where to get one, sir.

Q. Wasn't it about 23 cents or 23½ cents a pound for scrap—isn't that about right for March of 1957?

A. On a falling market, anything is possible. We could have even been out of the market at that time.

A. That newspaper is pretty authoritative, isn't it? [26]

Mr. Petrie: Your Honor, let's see the newspaper.

Mr. Roos: I am asking him.

Mr. Petrie: If Mr. Roos has it, I will stipulate to it.

Mr. Roos: This is a newspaper. I would like to ask the witness some questions about it, Mr. Petrie, if you don't mind. May I, your Honor?

The Court: See if we can just move it along;

(Testimony of William I. Teller.)

that's all. Every defendant is entitled to skilled counsel to ask as many questions as you want, but when you are talking about the market value of some commodity like metal, we can't use up the whole day getting at it. If there is another document that shows the correct market value which is different than what the witness says, let's have it.

Mr. Roos: The newspaper is authoritative, is it not?

A. It usually shows what the dealers are paying for the materials.

Q. It shows it in various cities in the country, does it? A. That is correct.

Q. And for San Francisco, if it said No. 1 heavy copper was 23 or 23½ or 24 cents a pound on that date, you would accept that as market value, would you not?

A. I would accept that as what the dealers were basically paying for scrap, yes, sir. [27]

Q. And that would be a basic indication of market value, right, what the dealers were paying?

A. I am sorry, your Honor; I know what he is leading up to and I have to agree with him, but there is a long "but" that goes along with that, such as the occasion of making sales to mills and export, which usually command a premium, by the way.

Q. I know, but we are talking here about going market value in San Francisco.

A. What I am trying to say is, actually you see these bids by dealers. The price shown in the American Metal Market is usually the price that the deal-

(Testimony of William I. Teller.)

ers are paying for smaller quantities at their door, and in order for a dealer to make a profit, obviously he wouldn't pay them more.

Q. In other words, the price in the newspaper is a higher price than the dealer might pay for a very large quantity; is that correct?

A. The price——

Q. The price that appears in the quotation in this American Metal Market, the newspaper, was the price that a dealer would pay for a small quantity?

A. Correct.

Q. If there was a large quantity like 20,000 pounds or something, the dealer would pay less?

A. More.

Q. For a large quantity per pound? [28]

A. He would pay more for a large quantity.

Q. He would pay more for a large quantity per pound?

A. Yes, that is a very peculiar thing.

Q. Where is the dividing line, or is there one?

A. Actually, the dividing line with the dealer is the tonnage that he is handling and whether he has to handle it through jobbers or he can ship it direct.

Q. Well, when we are dealing with fair market value, Mr. Teller, we are just trying to come up with an over-all norm, and for that purpose the quotation in the American Metal Market newspaper is accepted, is it not?

A. Yes.

Q. Just like quotations in the Wall Street Journal or the New York stocks on the New York stock exchange; correct?

A. Okay, sir.

(Testimony of William I. Teller.)

Mr. Roos: May I, your Honor; I would like to look at these documents for just a moment which the witness produced.

The Court: Are you going to have any magazines with this quotation? If you have it, I will strike the testimony. It is all speculative.

Mr. Roos: I have it, but I don't have it with me, unfortunately. I have it at my office; I didn't know this witness was going to testify today. I will have it. I might add it is the newspapers for March 5th, 6th and 7th. [29]

Q. Let me ask you while you are here, if you will assume and bear with me, that the March 5th newspaper has a San Francisco quotation and the March 7th newspaper has a San Francisco quotation, but the March 6th one does not; that indicates, that there has been no change between March 5th and March 7th, does it not?

A. I would say so, sir.

Mr. Roos: I will produce the newspapers, your Honor. I am sorry I left them in my office.

Q. The wire that we have been talking about that was shipped on this shipment, Mr. Teller, each particular coil did not have a number; is that correct?

A. Each particular coil did have a number, sir.

Q. I mean, each coil had the number "FH3916, Kobe."

A. No. 1 and upward, I think you will see on there. That No. 1 and upward means that they were numbered in numerical order from 1 to 186.

(Testimony of William I. Teller.)

Q. I wonder if you could explain for me on this blue tag here——

A. Yes, sir.

Q. ——the reason for “Quantity shipped, 22,046” being circled, which is a typewritten or printed figure, and then being circled, and then underneath that is written the figure “22,000” in pencil.

A. Yes, sir. The shipment originally was consigned [30] as ten ton metric—ten metric tons, which would have been 22,046 pounds, and the boys couldn’t make exact weight, and circling it on our tags mean not to show, and they wrote in the correct weight of our shipment underneath it.

Q. You say all of these coils were numbered, were tagged with a number from 1 to 186, inclusive?

A. I think that is what the paper shows there, sir.

Q. Is that what is meant by “mark FH 3916, Kobe, 1 and up”?

Q. This white document?

A. That is the document going to the dock, sir.

Q. So in the event of any shortage, Mr. Teller, it would be a very simple matter, would it not, to determine whether anything was short?

A. I would assume so.

Mr. Petrie: I will object to that as calling for the conclusion of this witness.

Mr. Roos: He is an expert. I think he is qualified.

Q. Incidentally, did American Metals——

A. American Smelting.

(Testimony of William I. Teller.)

Q. Federated Metals, I am sorry, American Smelting & Refining Company—did your company ever receive any claim—was there any claim ever made to you that the shipment was [31] short when it arrived in Japan?

A. Not to my knowledge, sir.

Q. In other words, Brandeis, Goldschmidt & Co., the immediate purchaser, never made a claim of shortage?

A. No, sir.

Q. And as far as you know, the consignee at Kobe never made a claim of shortage?

A. I presume so; I have heard nothing about it other than——

Q. Did you, in the course of this matter, know that the consignee in Japan had counted the matter, or that the material had been counted on the wharf in Japan and there was no shortage? Did you ever learn of that?

Mr. Petrie: I will object to that as calling for hearsay from this witness.

The Court: Yes, sustained.

Q. (By Mr. Roos): If there were a shortage on arrival in Japan, Mr. Teller, in the normal course of the business dealings of Federated Metals, you would expect it to be reported to your company, would you not?

A. Well, it would depend entirely on the type of sale we made, sir. If we had sold it c.i.f., which would have been delivered in Japan, I would say "yes." On a f.a.s. shipment, free alongside, as long

(Testimony of William I. Teller.)

as we have documents showing that the proper tonnage and the proper count got to the dock, I don't believe that we would have received a claim. [32]

Q. But nobody ever asked you to prove that you had made a sufficient delivery to the dock, did they?

A. No, we furnished the papers at the time of shipment, sir.

Q. Your original order was for 200 coils; was that correct?

A. No, sir, I think the original contract called for 60 tons, which would be roughly 120,000 pounds, and there were actually—again I am going by memory at the moment—three shipments made against that particular contract. That would be the first white paper on the front of all that.

Q. Would you look at this telegram here on the front which says, "200 coils; 22,000 pounds," and explain that for us? A. I can't sir.

Q. Pardon me?

A. I don't know what it means. Somebody wrote down 200 coils and put down 22,000 pounds in pencil, which I would guess was an estimation made by someone of the approximate number of coils for the weight.

Q. I will ask you to look at this document entitled "Dock receipt," a yellow paper in the records of the American President Lines which have been marked Defendant's Exhibit A for identification.

Mr. Petrie: Your Honor, I let those be marked because Mr. Roos said he wanted to have a look at

(Testimony of William I. Teller.)

them. I don't think it is proper for him to show these documents to [33] this witness. This witness is not with the American President Lines; he is with the Federated Metals Company.

The Court: I think your objection is good. I don't see any point to any of this examination, either by the Government or by the defense, except to prove that this wire is part of an interstate shipment; that is all.

Mr. Roos: The weight isn't right or anything else, the number of coils.

The Court: In this case, in order to hold the defendant, the Government has to prove that these coils were part of an interstate shipment and that the defendant stole them, and that is all we are concerned with. It doesn't make any difference what shipment they were, how they went. The only reason I allowed any of this testimony is to show that this is part of an interstate shipment.

Mr. Petrie: Foreign shipment, your Honor.

The Court: Foreign shipment, I should say.

Q. (By Mr. Roos): This document labelled "Dock Receipt," would you tell me if you have ever seen that before, Mr. Teller?

The Court: What is he handing him now?

Mr. Petrie: He is handing him a paper that the witness from the American President Lines produced this morning.

The Court: I will sustain the objection. They are not in evidence.

(Testimony of William I. Teller.)

Mr. Roos: The Government's aren't either, your Honor. [34]

The Court: They have not been identified.

Mr. Roos: I am trying to lay a foundation to identify them. Maybe I can do it with this particular document with this witness, your Honor.

The Court: How can this witness identify a document of the American President Lines?

Mr. Roos: I don't know; it is a dock receipt. I am asking him if a copy of that was——

The Court: I will sustain the objection, and you desist from this line of examination. It is immaterial.

Mr. Roos: I don't think it is, your Honor. The reason I questioned him about that document is that it has the same curious material on this document as on this one of the witness' record that he is unable to explain.

The Court: I will sustain the objection on the ground that it is immaterial to this case. Whether it is mysterious or what it is, it is of no importance.

Mr. Roos: The weight, your Honor, and the number of coils in this shipment is extremely vital and important to this case.

The Court: I don't see that, counsel. You may be right. We are only concerned with the material the defendant is charged with stealing. There could have been a million or a dozen coils besides this and it wouldn't make any difference.

Mr. Roos: I will tie it up, your Honor, if I [35]

(Testimony of William I. Teller.)

am given the opportunity, but I can only ask one question at a time of one witness.

Mr. Petrie: Your Honor, the Government's position is that if Mr. Roos wishes to produce this material through some American President Lines witness, he can do it at some later time.

The Court: I will sustain the objection. I don't ordinarily want to limit cross-examination, but this witness was put on only for the purpose of showing that there were 186 coils, or whatever it was, that was shipped at a certain time, delivered to the dock in San Francisco. That is all his testimony is. That is the only materiality.

Mr. Roos: The purpose of my cross-examination, your Honor, if I were allowed to pursue it, would be to show that probably there were 200 coils and not 186.

The Court: I would hold that that is immaterial. What difference does that make? The defendant is not charged with stealing 200 coils; he is charged with stealing these coils that are here in evidence and that is all. The only materiality is, were they down on the dock, were they part of a shipment abroad, and did he take them? That is what the Government has to prove. If they don't prove that, that is the end of the case.

Mr. Roos: The Government hasn't yet proven, your Honor, that any coils were stolen from that particular shipment. [36]

The Court: Of course they haven't. This witness was only put on—I am getting into an unnecessary

(Testimony of William I. Teller.)

discussion—this witness was only put on for the purpose of showing that there was a shipment of so many coils that was sent down to the dock. The Government has to connect up these coils with that shipment. It can't do it all at one time. This witness is only testifying to the character of a whole shipment that was made, 186 coils. That is all he has testified to. I am going to limit cross-examination.

Q. (By Mr. Roos): You did not yourself, Mr. Teller, participate in the weighing of this shipment, did you? A. No, sir.

Q. And anything you know about the weighing is pure hearsay, is it not—in other words, it's what somebody else told you?

A. What is on these documents here.

Q. And you have no personal knowledge of the documents?

A. That is correct; no, sir.

Mr. Ross: I think that is all I have at this time.

Mr. Petrie: The Government offers this Exhibit 4 in evidence, your Honor.

The Court: Do you need it all in evidence—all these documents?

Mr. Petrie: I had thought perhaps we would not, [37] your Honor; but not knowing what Mr. Roos is going to claim, I thought while this witness was here it would be timely for me to offer just Exhibit 4, the shipping documents.

The Court: He has already identified them.

Mr. Petrie: I will not, then, your Honor. If it is necessary to recall this witness—

Mr. Roos: If the whole sheaf of documents is offered, your Honor, I will certainly object to at least a good portion of them as hearsay.

The Court: Anything else of the witness?

Mr. Petrie: No, your Honor.

(Witness excused.)

Mr. Petrie: Mr. Calkins.

CHESTER E. CALKINS

called as a witness by the Government, being first duly sworn, testified as follows:

The Clerk: Please state your name to the Court and to the jury.

The Witness: Chester E. Calkins.

The Clerk: What is your first name?

The Witness: Chester.

The Clerk: Please spell your last name.

The Witness: C-a-l-k-i-n-s. [38]

Direct Examination

By Mr. Petrie:

Q. What is your occupation, Mr. Calkins?

A. Receiving Clerk.

Q. For what company, sir?

A. Federated Metals.

Q. Were you working for that company in March of 1957? A. I was.

Q. Do you recall in that month preparing a shipment of used coils of copper wire for shipment out from Federated?

(Testimony of Chester E. Calkins.)

A. We prepared several shipments that month; I would have to refer to the book.

Q. To the what?

A. I would have to refer to my log book of my shipments.

Q. Did you bring the log book with you, Mr. Calkins? A. Yes.

Q. Can you tell from it if you prepared such a shipment on March 6, 1957? A. I could.

Q. Look at the book and tell us.

A. Yes, there was.

Q. I show you Government's Exhibit 3 for identification, Mr. Calkins, and I ask you if you can identify that tag.

A. It has the same marks as we have in the book.

Q. Well, do you recognize that as a tag that you prepared [39] or not, sir? A. Yes, sir.

Q. And what is the marking on that tag?

A. "FH3916, Kobe, No. 174."

Q. What does the No. 174 refer to, Mr. Calkins?

A. That is the coil number.

Q. You mean that was the 179th coil in the shipment? A. 174th coil in the shipment.

Q. 174th coil in the shipment? A. Yes.

Q. How many coils were there in the shipment?

A. 186.

Mr. Petrie: I have nothing further, your Honor.

(Testimony of Chester E. Calkins.)

Cross-Examination

By Mr. Roos:

Q. I take it, Mr. Calkins, you have no independent recollection of all this except what is referred to in your log book? A. No, I have not.

Q. Where is the reference?

A. This one here (indicating.)

Q. And when were the X's made in the book?

A. That was made after the investigation started and I marked that so that I could find it in the book.

Q. You have talked to somebody about this, have you? [40] A. Yes.

Q. Who was that? A. Mr. Burroughs.

Q. And when did you talk to Mr. Burroughs about it?

A. I couldn't give you the exact date; it was some time last year.

Q. Some time in March of 1957?

A. No, it was later than that.

Q. About April or May? Do you remember approximately?

A. I would say along the middle of the summer.

Q. The summer of '57? A. Yes.

Q. And the information—you didn't count the coils yourself? A. Yes.

Q. You counted them yourself? A. Yes.

Q. And you had 186 coils?

A. Each coil, as it was loaded, there was a tag put on it indicating the coil number.

(Testimony of Chester E. Calkins.)

Q. And how about the weight? Did you weigh them yourself— A. Yes.

Q. —or did you get that information from somebody else?

A. I weighed them myself. [41]

Q. And it weighed 22,000 pounds?

A. Uh-huh (affirmative.)

Q. And what scale did you use to weigh them?

A. The truck scales.

Q. Isn't it a little unusual for 186 coils to come out exactly 22,000 pounds right on the nose?

A. Not necessarily. If I remember right, on that particular one we were trying to make 22,000 pounds and we juggled the last few coils to make it come out that weight.

Q. Was there any particular reason you wanted to come out exactly 22,000 pounds?

A. As I understand it, their export license called for not to exceed 22,000 pounds.

Q. Mr. Teller testified from the documents here that the original order was for 10 metric tons, which would have been 22,046 pounds.

A. They they have changed that. I don't know as to what the office—that was the instructions we had, was not to exceed 22,000 pounds.

Q. Weren't you trying to make 22,046 rather than 22,000? A. It might have been 22,046.

Mr. Petrie: What did the witness say, your Honor—"it might have been"?

Mr. Roos: "It might have been."

Q. But it certainly is unusual to get a load of

(Testimony of Chester E. Calkins.)

scrap [42] metal weighing 22,000 pounds, Mr. Calkins, will you concede that?

The Court: Oh, counsel, I don't want to restrict you, but what difference does it make? He has already testified that he loaded that much on.

Mr. Roos: All I can say, your Honor, is that the weight is material; it will appear to your Honor later.

The Witness: You mean exactly a certain even number of pounds? No, I wouldn't say it was unusual because we have received and shipped similar shipments.

Q. Of scrap metal where it is exactly even to the thousandth of a pound? A. Yes.

Q. Thousand pounds? A. Yes.

Q. Just looking through your book, Mr. Calkins, I only seem to find one other where something came out 15,000 pounds and that was Monell Metal, which probably wasn't scrap.

A. It was scrap. That is all we handle there in this book is scrap.

Q. Isn't it a fact that this wasn't weighed accurately at all, Mr. Calkins, when it left Federated Metals, but you merely estimated the weight?

A. No.

Q. Of 22,000 pounds.

A. No, it was weighed accurately. [43]

Mr. Roos: I have no further questions.

(Testimony of Chester E. Calkins.)

Redirect Examination

By Mr. Petrie:

Q. Did you prepare a tag for each of the 186 coils, Mr. Calkins? A. Yes.

Q. Were those tags similar to the tag that is Government's Exhibit 3 for identification?

A. That's right.

Q. The tag numbered 174?

A. That's right.

Q. The letters and numerals and the name Kobe are stamped on the tag, are they not, Mr. Calkins?

A. Yes, they are.

Q. Will you describe what kind of a machine stamps those?

A. It is a hand rubber stamp that you have to put each individual letter in, small holder——

Q. You did that, did you not, when you prepared these tags? A. Yes, I did.

Mr. Petrie: I have nothing further.

Mr. Roos: I have nothing further, your Honor, except to offer Mr. Calkins' log book which he testified from rather than his own recollection. I would like to offer the log book.

Mr. Petrie: The log book refreshed his [44] recollection that he prepared this shipment of 186 coils, your Honor. I will object to it as incompetent and irrelevant.

The Court: Mark it for identification.

Mr. Roos: We will mark it for identification.

(Testimony of Chester E. Calkins.)

Q. While he is here, is this your log book that you keep out there?

A. This is the company book.

Mr. Roos: We will offer it as defendant's next in order.

The Court: I will sustain the objection to it unless you can show the materiality.

Mr. Roos: The witness used it to testify from.

The Court: I know, but you are offering the whole book, counsel, with a great many pages and it has got information and it has got lots of things that have nothing to do with this case. I am not allowing that sort of evidence to go in. Mark it for identification. If it appears at any time that any part of it is important to the defendant's case, it will be here to be admitted.

The Clerk: Defendant's Exhibit C marked for identification.

(Log book of Mr. Calkins was marked Defendant's Exhibit C for identification.)

Mr. Petrie: That is all, Mr. Calkins.

(Witness excused.) [45]

Mr. Petrie: Mr. Peters, please.

DANIEL H. PETERS

called as a witness by the plaintiff, being first duly sworn, testified as follows:

The Clerk: Please state your name to the Court and to the jury.

The Witness: My name is Daniel H. Peters.

Direct Examination

By Mr. Petrie:

Q. Mr. Peters, what is your occupation?

A. I am employed by the American President Lines in San Francisco. I am Chief Supervisor for the Terminal, Pier 5.

Q. Is your office at the pier? A. Yes, sir.

Q. Have you brought with you this morning a dock receipt? A. Yes, sir.

Q. Or the carbon of a dock receipt, I believe it is. You are handing me two papers; is one a copy of a dock receipt?

A. The green paper here is a duplicate copy of our dock receipt, and the white paper in back of it is a copy from the American Smelting & Refining Company of their bill of lading given to the truck.

Mr. Petrie: May this be marked, your Honor? I didn't want to have the witness testify about it before it is [46] marked. May it be marked Government's Exhibit 6 for identification?

The Clerk: Plaintiff's Exhibit 6 marked for identification.

(Dock receipt referred to was marked Plaintiff's Exhibit 6 for identification.)

(Testimony of Daniel H. Peters.)

Q. (By Mr. Petrie): Where did you get those two papers, Mr. Peters?

A. We had those in our dock file.

Q. You keep a copy of the dock receipt?

A. Yes, sir.

Q. At the pier? A. Yes, sir.

Mr. Petrie: That is all of this witness.

The Court: Are you offering these in evidence?

Mr. Petrie: No, I am just producing them because this witness is the custodian. I am going to produce another witness to talk about them.

Cross-Examination

By Mr. Roos:

Q. Mr. Peters, can you explain for us on this dock receipt which is Plaintiff's Exhibit No. 6, the type—how it happens to bear the typed figures "200 coils" and the typed weight over here "22,046," and then those figures are scratched out and in their stead in pencil is "186 coils, 22,000 pounds, [47] weight not certified"? Can you explain for us, if you know—maybe you don't—how those changes happened to have been made?

A. Well, I can attempt to give you the correct details; there could be one or two variations.

Mr. Petrie: If the witness personally made the changes, your Honor, that is one thing. If he is talking about what he learned from some other source, I am going to object to it.

Mr. Roos: If he knows.

The Court: Did you make those changes?

(Testimony of Daniel H. Peters.)

The Witness: No, sir.

The Court: You are going to recite what somebody told you about that?

The Witness: No, sir.

The Court: If you didn't put the figures down and you are going to explain how they came there, it must be as a result of what somebody else told you.

The Witness: No; what I was going to explain is a possibility of the way they could be changed.

The Court: I think counsel is right in his objection. This is hypothetical.

Q. (By Mr. Roos): Would what you are going to testify on be based on your experience and custom as the superintendent down there at the APL dock?

A. Yes. [48]

The Court: Are you going to have a man who is going to testify about these documents?

Mr. Petrie: Yes, your Honor.

The Court: This would be merely a hypothesis, if he doesn't know. If he knows anything about it——

Mr. Roos: He knows the custom and practice.

The Court: If we have got somebody that knows what was done, we don't need custom and practice. We are wasting a lot of time.

Mr. Roos: Do you have somebody that knows what was done?

The Court: I will sustain the objection.

Mr. Petrie: Yes; if he doesn't know——

Mr. Roos: If the judge wants to speed it up,

I am trying to do that. Mr. Petrie says he doesn't know whether the other man knows about it.

Mr. Petrie: No, I did not. I say I believe the other man is going to be able to testify about these documents. I know he is going to be able to testify about the documents; I don't know whether he will be able to explain that or not.

Mr. Roos: That is all.

Mr. Petrie: All right. Thank you very much, sir.

The Court: We will excuse this witness.

(Witness excused.)

(Recess taken to 2:00 o'clock p.m. this [49] date.)

Tuesday, September 16, 1958—2:00 P.M.

Mr. Petrie: Mr. Delehanty, please.

MARTIN DELEHANTY

called as a witness by the Government, being first duly sworn, testified as follows:

The Clerk: Please state your name to the Court and to the jury.

The Witness: Martin Delehanty.

Direct Examination

By Mr. Petrie:

Q. What is your occupation?

A. Ship's clerk. That is checking freight at the waterfront, freight coming in and going out.

Q. For what company do you work?

(Testimony of Martin Delehanty.)

A. It is the Pacific Maritime Association. That is comprised of all the steamship companies. I work one dock one day and another another day, and so on.

Q. Depending on to which dock you are assigned out by the company?

A. That is right.

Q. Did you from time to time work on the docks of the American President Lines?

A. Yes, sir.

Q. Checking freight into piers there? [50]

A. Yes, sir.

Q. I show you Plaintiff's Exhibit 6 for identification, Mr. Delehanty, and ask you if you recognize that?

A. Yes, that's my handwriting.

Q. What is your handwriting, Mr. Delehanty?

A. The signature here, the number and the date.

Q. When did you put that handwriting on the dock receipt?

A. After the truck was emptied.

Q. You made the check of the truck on that day?

A. As they take them off, I count them one by one.

Q. Did you check off the coils of wire that day?

A. All the coils, yes.

Q. That was March the 6th, 1957?

A. Yes, in the afternoon.

Q. I call your attention to Government's Exhibit 1 on the board, Mr. Delehanty, and I ask you to get yourself oriented on that and show us with

(Testimony of Martin Delehanty.)

the pointer at what place on Pier 50—in the lower left-hand corner that should be.

A. That is where it should be. The trucks come in here, and then they come out here, and that is in between here. And then they come out here to the end. All the stuff like old paint drums and everything, they put out here on this section here.

Q. Do you recall whether it was the end of Shed D? A. Shed D, yes. [51]

Q. Did you from time to time check items off at the end of Shed C?

A. Shed C—it goes A, B, C, D. Sometimes we work over here; we work at all four sheds.

Q. Did you know upon what boat those coils were to be loaded?

A. I don't remember just now.

Q. What makes you recall now that you unloaded the coils near Shed D instead of Shed C?

A. When the trucks came in that had that stuff on, they would put it out on the end of D because they put all the oil drums and big stuff like that here to keep it away from the other cargo.

Q. Did you assist in unloading the coils, Mr. Delehanty, or did you merely check them?

A. Oh, I just simply checked them?

Q. Did you check each individual coil as it came off? Did you make an individual check?

A. Yes.

Q. And then you signed the dock receipt after making the count?

A. I signed the date and the count.

(Testimony of Martin Delehanty.)

Q. How many coils did you check off?

A. 186.

Q. Will you please, Mr. Delehanty, with this white pencil make a large W on that map where the coils were stored after [52] they were unloaded from the truck—just a large W for wire.

A. Right around here (indicating).

Q. Put the pencil down on the table, if you will, please. Now, do you recall if there were any tags on the coils of wire, Mr. Delehanty?

A. Every coil was tagged numerically from 1 to 186 and some of them were kind of imbedded in between—if the rolls were loose, they were kind of imbedded in between. In some cases, if a tag fell off, we would put them back on again. When I counted them, I counted the coils, not the tags.

Q. I show you Government's Exhibit 3; can you tell us if that was the kind of tag that was on the coils of wire?

A. That is about the size and shape of them, and the number, yes, sir.

Mr. Petrie: I have nothing further, your Honor.

Cross-Examination .

By Mr. Roos:

Q. Mr. Delehanty, you have checked in and checked out a lot of cargo since March 6, 1957, haven't you? A. Yes, sir.

Q. You don't really have any specific recollection of these particular coils of wire, do you?

A. Yes, I remember them quite well.

(Testimony of Martin Delehanty.)

Q. What did you unload on March 5, 1956?

A. Well, nothing was brought to my attention; there was [53] nothing wrong on March 5th.

Q. This just comes to your attention now because the F.B.I. told you that something was wrong; is that it?

A. No, no.

Q. What was wrong on March the 6th?

A. Well, as far as I was concerned, there was nothing wrong, as far as I was concerned; everything okay as far as I was concerned.

Q. You don't remember anything more about March 6th, than you do March 7th or 8th, do you?

A. They came in with the truck and unloaded, and at 3:00 o'clock they went to coffee, and when they finished unloading—they didn't go to coffee right away; they just sat there and smoked about 10 or 15 minutes; then they finished unloading the truck, and I signed the paper and that was all there was to it.

Q. Where did you work on March 7th, 1956?

A. I can't remember that; there was nothing wrong on that date.

Q. Where did you work on March 8th?

A. I don't remember. I think I have a calendar here with the dates and hours I worked at different piers.

Q. Did you refresh your memory from the calendar before you came to court today?

A. No, I didn't, but that is my signature, my handwriting there. [54]

Q. I am not doubting you at all, Mr. Delehanty;

(Testimony of Martin Delehanty.)

all I am saying is you don't remember anything more about this particular coil of wire than you do about any other work you did a year and a half ago, do you?

A. No, I just go from one dock to another, and then he brought up another piece of paper like that the following day that had my handwriting on it, and I——

Q. And this means you counted out 186 coils, does it? A. We circled that.

Q. How about this 186 in blue pencil?

A. No, that would be the one that loaded them on the boat. That shows where it was loaded in Hatch No. 4 between decks. That is put down by the loading clerk that loaded the ship.

Q. And that indication on there, this blue down here, would have been put on by the loading clerk aboard the ship, right? A. Right.

Q. And that indicates, does it not, that 186 coils were loaded aboard the vessel?

Mr. Petrie: I will object to that, your Honor, as calling for the conclusion of this witness. There is no showing that another count was made by the hatch clerk or that this witness knows anything about it.

Mr. Roos: You don't deny that one was made, do you, Mr. Petrie? [55]

The Court: He is not making any contention with regard to that.

Mr. Roos: I would like to know at this time from the United States Attorney as to whether he

(Testimony of Martin Delehanty.)

will produce before this jury the official, whoever he may be, a Mr. Sheehan is the name; I have no idea who he is or where he is—who on the original Plaintiff's No. 6 signed his named under "186 coils"; what do those symbols mean, Mr. Delehanty?

A. No. 4 hatch of the upper 'tween decks.

Mr. Roos: Whether he will produce for this jury the man who made the count aboard the vessel.

Mr. Petrie: Mr. Roos can subpoena any witness that he wants.

Mr. Roos: I don't know where he is or who he is except that on this original his name is Mr. John Sheehan. Are you planning to produce him?

Mr. Petrie: I have never talked to him or I have never heard his name other than your calling it to my attention on the sheet.

Mr. Roos: I think the U. S. Attorney has some duty to get the whole truth before this jury.

The Court: Counsel, I will have to ask the jury to disregard your statement and I will instruct the jury that the United States Attorney hasn't got any duty to do that unless it was necessary for the proof of his case. [56]

Mr. Roos: You mean the U. S. Attorney doesn't have a duty to bring out the truth?

The Court: I am not going to discuss the matter with you. I will simply hold that it is unnecessary for the United States Attorney to prove what wire went into the vessel. It is not part of his job. His duty is to prove, as I said before, that the wire that is here in court went onto this dock and it was

(Testimony of Martin Delehanty.)

stolen by the defendant. If he doesn't prove that, then he doesn't prove his case.

Mr. Roos: If he has evidence that shows 186 cases were delivered by Mr. Delehanty and 186 coils were delivered aboard the vessel and stowed in a hold, he has some duty to reveal it to this Court; otherwise, he is concealing evidence.

The Court: It wouldn't make a bit of difference if he proves by evidence that his particular wire was part of the shipment and was stolen by the defendant. If he doesn't prove that, he doesn't prove his case.

Mr. Roos: If 186 coils were stowed aboard the vessel——

The Court: It just gives you an opportunity to argue some extraneous issue to the jury. All I am saying is that that is immaterial.

Mr. Roos: I submit the guilt or innocence of the defendant is not an extraneous issue, with all due respect [57] to the Court.

The Court: Nor am I saying that. I have put the matter very much more strongly in your favor.

Any other questions?

Mr. Roos: Oh, yes, just one.

Q. Mr. Delehanty, I believe you said that when you unloaded or, rather, when you counted this wire, these coils, some of the tags that were aboard had come loose——

A. As you looked down either way, some tags had come loose and were imbedded in between and in some cases there was maybe three or four of

(Testimony of Martin Delehanty.)

them come off and I just threw them right in with the pile. What I counted was the coils, not the tags.

The Court: That is all of this witness?

Mr. Petrie: No, one more question.

Redirect Examination

By Mr. Petrie:

Q. Mr. Delehanty, some time after you checked this wire at Pier 50, did an F.B.I. agent interview you?

A. Yes, there was two of them there when I was working there some time later.

Q. Do you remember how much after you made the check, how long it was after you made the check?

Mr. Roos: It is incompetent, irrelevant and immaterial. [58]

Mr. Petrie: Your Honor, Mr. Roos has asked the witness what he did on the 7th and what he did on the 8th and so on. I simply want to show that he was interviewed soon thereafter and it became fixed in his mind.

The Court: He has already testified that he was interviewed by an F.B.I. agent.

Q. (By Mr. Petrie): Mr. Delehanty, are the coils of wire before you similar in kind to the ones that you checked off on that day?

A. Very much so; exactly.

Mr. Petrie: I have nothing further.

The Court: That is all?

(Testimony of Martin Delehanty.)

Recross-Examination

By Mr. Roos:

Q. Mr. Delehanty, you can say positively that these are the exact coils that you checked that day?

A. No, it is not a standard size or mark—

Q. It resembles them, but you can't positively say that you counted them.

A. It resembles them very much.

Mr. Roos: Thank you very much.

(Witness excused.)

Mr. Petrie: Mr. Rowland. [59]

HERBERT ROWLAND

called as a witness by the Government, being first duly sworn, testified as follows:

The Clerk: Please state your name to the Court and jury.

The Witness: Herbert Rowland.

Direct Examination

By Mr. Petrie:

Q. What is your occupation, Mr. Rowland?

A. I am with the American President Lines in the freight division. I supervise the outbound section.

Q. Were you working in that position in March of 1957? A. I was.

Q. And did you bring with you certain papers

(Testimony of Herbert Rowland.)

of American President Lines relating to a shipment of copper wire to Japan in the month of March, 1957? A. I did.

Q. What papers did you bring, sir?

A. I brought the company master bill of lading covering the export transactions.

Q. The entire log for a particular ship?

A. The receiving record and the bill of lading master.

Q. Can you locate in that book the bill of lading for this shipment of copper wire to Kobe?

A. Yes, sir, I can. [60]

Q. Do that, will you, sir?

A. I have it right here.

Q. Have you had a photostatic copy of that bill of lading made? A. I have.

Q. May I have the photostatic copy, please?

A. Yes, sir, (handing the document to counsel).

Mr. Petrie: If there is no objection, your Honor, from Mr. Roos, we will use the photostat and you may cross-examine.

Mr. Roos: May we see the original?

Mr. Petrie: It is in that book. Or perhaps we can proceed with the original, your Honor, and I will ask permission to substitute the photostatic copy. There are many other papers in the file.

Q. Do you have also in that book a dock receipt showing the receipt at the pier of those coils of wire?

A. I do. The dock receipt is here.

Q. Is that signed by Mr. Delehanty?

(Testimony of Herbert Rowland.)

A. Yes.

Q. Does it show that 186 coils of copper wire were received at the pier on March 6, 1957?

A. That is right.

Q. What does the bill of lading show, Mr. Rowland?

A. The bill of lading has the usual information: the [61] shipper, the consignee, the destinee, the number of packages and the mark.

Q. Who was the consignee?

A. The consignee was the Tatsuta Industrial Company, Ltd., in Tokyo.

Q. The material was actually directed to Kobe, was it not? A. Yes, sir.

Q. The Tatsuta Company was the consignee to be notified upon the arrival of the material in Japan; is that correct? A. That is correct.

Q. Do you have any paper there that shows or purports to show how many coils of wire were loaded aboard the ship?

A. I do not have the loading record.

Q. Who has that?

A. That is in the Operations—in the pier records.

Q. In the Operations Section? A. Yes.

Q. What person would be in charge of that record? A. I think——

Q. At the present time.

A. Mr. Holgrenson or Mr. Peters. Mr. Holgrenson is the pier superintendent. They would be under his custody.

(Testimony of Herbert Rowland.)

Q. Have you made a photostatic copy also of the dock receipt?

A. Yes, sir, it was with the others. [62]

Q. Was that with the paper that you just handed me? A. It was.

Mr. Petrie: I will ask that the two photostatic copies, your Honor, be marked Government's Exhibit next in order for identification.

The Clerk: As one exhibit, counsel, or two exhibits?

Mr. Petrie: As one exhibit, one with an A.

The Clerk: Plaintiff's Exhibits 7-A and 7-B marked for identification.

(The photostats of bill of lading and dock receipts were marked Plaintiff's Exhibits 7-A and 7-B for identification.)

Q. (By Mr. Petrie): Do you have any personal knowledge of this shipment, Mr. Rowland?

A. No, I do not.

Q. Were you at the pier when it was received from the trucker or when it was loaded onto the ship?

A. No, I was not; my connection is purely documentation.

Q. Can you tell us on what ship the wire was loaded according to the papers?

A. It was the President Taylor, Voyage 1.

Mr. Petrie: I have nothing further, your Honor.

(Testimony of Herbert Rowland.)

Cross-Examination

By Mr. Roos:

Q. Mr. Rowland, could you tell us from your records how much was loaded aboard the President Taylor? [63]

A. I do not have the loading records, but the receiving record is 186, and our bill of lading was issued for 186. As I say, I do not have the loading record; I have the receiving record.

Q. I am not familiar with how these things operate. This tissue document with the number 99537; that is what, sir?

A. That is the original dock receipt.

Q. The original dock receipt, except this is a carbon copy. The original goes——

A. No.

Q. I am sorry to be so ignorant.

A. Our form is a snap-out form. The first five sections are the United States Customs Export Declaration form; then our dock receipts follow on the back of that snap-out form, so while it is a carbon, it is still the original.

Q. What does this evidence, then? Do you give a copy of this with Mr. Delehanty's signature as receiving clerk acknowledging to the shipment that you have received in material, or how does that work?

A. No; when the goods are cleared by the Customs, the dock receipt is sent to the pier. The goods are received against this at the pier.

(Testimony of Herbert Rowland.)

Q. I am sorry to be so stupid, but I don't understand what the purpose of this dock receipt is. It must be signed. Does it acknowledge that American President Lines received [64] the material referred to in it? A. It does.

Q. Is that the purpose?

A. Yes, it does. Against that we issue a bill of lading to the shipper for the number of packages shown on that dock receipt.

Q. And could you explain on the dock receipt the scratch-out of "200 coils" and putting in of "186," and the scratching out of "22,046 pounds," under the weight, and putting in "22,000" in pencil?

A. Well, the 200 was the amount that was originally cleared by the shipper, or in this case the shipper's broker. Then for some reason or other unknown to me, possibly the supplier could not deliver the complete 200 and could only deliver 186. One hundred eighty-six was the number of coils that came into our pier.

Q. You mean, in other words, that these dock receipts are all made up ahead of time before the stuff arrives, because you are expecting it?

A. That is correct. The Customs requires that the goods be cleared before it moves onto the pier.

Q. With regard to the correction of weight, does that "not cert." mean that the weight is not certified? Is that what that means?

A. Yes, sir. [65]

Q. I notice originally it said "200 coils, 22,046

(Testimony of Herbert Rowland.)

pounds," and then it was changed to 186 coils, 22,000 pounds; is that correct?

A. That's correct.

Q. And I take it neither the original weight of 22,046 nor the later weight of 22,000 was certified; is that correct?

A. No, it wasn't certified. It was the weight as represented to us by the shipper and also represented to the Customs.

Q. In other words, American President Lines did not reweigh it itself; is that right?

A. We did not.

Q. How many copies of this dock receipt are issued? I believe you have the original before you and I have a photostat here.

A. I will have to give you an approximation. There is the original which I have here, there is the pier record, there is a copy for the vessel, and then there is one more stowage record.

Q. In practice, then, one copy of this dock receipt goes aboard the vessel; is that correct?

A. Yes, sir.

Q. And what is the procedure after it proceeds from the vessel to the dock? Withdraw that, I am sorry, I have it backwards. [66]

What is the procedure after it arrives on the dock? It is checked out and signed for by the shipping clerk and it is placed on the end of the dock—what happens after that?

A. It is checked again on loading into the vessel.

(Testimony of Herbert Rowland.)

Q. And who checks it and counts it into the vessel?

A. It would be one of the clerks; I suppose you would call him a receiving clerk. I don't really know the title.

Q. Is it a member or one of the officers of the crew? A. No, not of the crew.

Q. Is there some document or other that the captain of the vessel signs after everything has been counted in which he acknowledges receipt of this hold cargo? A. No, sir.

Q. Doesn't the captain sign a manifest sheet or cargo list whereby he acknowledges everything listed on the list has been put aboard the vessel as cargo?

A. Not to my knowledge. The loading records and receiving records are handled by receiving clerks under the direction of the pier personnel.

Q. Government's Exhibit No. 6 is another copy of this dock receipt. Up in the right-hand corner it says "Copy (Dock Record)." Would you take a look at that copy for us? A. Yes, sir.

Q. And could you tell me why that copy does not have the material in heavy blue crayon down in the lower part of it here, [67] "Lot No." and so on, and why that copy has it and your original does not?

A. Yes, sir, my original is signed up, or this original is signed and returned to me—I am up town—and it is my record that the cargo has been received.

(Testimony of Herbert Rowland.)

Q. So all you are concerned with is the receipt on the dock? A. Yes.

Q. And then customarily the lower section is filled out as it is in this case to show the receipt aboard the vessel; is that correct?

A. Yes, sir.

Q. Now, as part of Defendant's Exhibit A for identification—and I might tell you these are American President Lines records produced by Mr. Wheeldon—we have a yellow copy——

Mr. Petrie: Your Honor, I am going to object to it as being out of order. These are documents that Mr. Roos asked to be produced so he could have a look at them this morning, so as not to keep witnesses here. Now he is asking some other witness about it.

The Court: Unless the witness could identify them——

Mr. Roos: This witness works for American President Lines.

Q. This yellow copy says: "Copy for steamer."

The Court: Find out if he can identify them. Did that come before you? [68]

Q. (By Mr. Roos): Would you look at that and tell us if that is not another copy of the dock record, the original of which you have in your possession, Plaintiff's Exhibit 7-A for identification?

A. Yes, sir, it is.

Q. And could you decipher for us the portion below the line on that? Would you read it for us?

Mr. Petrie: I am going to object to the witness

(Testimony of Herbert Rowland.)

reading it. This is some notation that is on the document that this witness didn't—

The Court: Did you make out this document?

The Witness: No, sir, I do not come into the picture on these notes down at the bottom. They are beyond me; they are Operational records.

The Court: The record that the attorney has just handed you is an Operational record?

The Witness: The notation is.

The Court: You have nothing to do with that?

The Witness: No, sir.

The Court: You don't know who put it on or why?

The Witness: No, sir.

Q. (By Mr. Roos): From your experience—how long have you been with A.P.L., sir?

A. Twenty-seven years.

Q. And did you ever have any experience in the dock shipping [69] department, the Operational Department?

A. I have been in the Foreign office mostly.

Q. Isn't it a fact that on those dock receipts the material below the line which does not appear on your original is customarily the place where the ship's count of the material is put in after the material is transferred from the dock to the ship?

Mr. Petrie: Pardon me, your Honor. I am going to object to this. There was a witness here this morning. Apparently that witness can be recalled by the defense and produced at the proper time, who is familiar with this practice as this witness

(Testimony of Herbert Rowland.)

is not. I don't think this is competent for this witness.

The Court: I don't think so, either.

Mr. Roos: Let the witness answer whether he knows——

The Court: It isn't a question of whether he knows, but whether he knows anything about this document.

Do you know anything about this document? Did you have any connection with it?

The Witness: I had nothing to do with those notations. I couldn't say who put those on.

Q. (By Mr. Roos): Could you read the name for us where there is a signature?

A. It appears to be John Sheehan.

Q. Do you know Mr. Sheehan? [70]

A. No.

Q. Never heard of him? A. No, sir.

Q. Who would he be apt to be, do you know?

The Court: What are you trying to do?

Mr. Roos: I am trying to locate the man. I don't know him.

The Court: You can't make this into a discovery proceeding. This witness doesn't know about it. If there is something important there that you want to get in, why, you can subpoena the proper person.

Mr. Roos: I offer to prove by this witness, your Honor, that that notation there indicates that 186 coils of copper wire was put in——

The Court: I know, you said that before, but

(Testimony of Herbert Rowland.)

you can't prove it by this witness because he doesn't know.

Mr. Roos: I think he does now, your Honor, if your Honor will let him answer.

The Court: I will give you any process of the Court if it is necessary and proper for you to prove that fact. You are just taking up time with some witness that doesn't know about it.

Mr. Roos: Well, I think he does from custom and practice. He doesn't know about this particular document.

The Court: I wouldn't allow any evidence in on [71] custom and practice because maybe it wasn't so in this case. When you have got people that are available that can testify to it, you can produce them. I will sustain the last objection. Shortcuts to save time are advisable, but we can't take assumptions in place of proof.

Anything else of the witness?

Mr. Roos: I have no further questions.

The Court: Anything else?

Mr. Petrie: Yes, your Honor.

Redirect Examination

By Mr. Petrie:

Q. Mr. Rowland, do you have any personal knowledge that an independent check was made of these coils of wire as they were loaded aboard the vessel President Taylor? A. No, sir.

Mr. Petrie: The Government offers its Exhibits 7-A and 7-B in evidence, your Honor.

(Testimony of Herbert Rowland.)

The Court: Those are photostats. Do you want to offer the photostats instead of the originals?

Mr. Petrie: Yes, your Honor.

The Court: U. S. Exhibit No. 7—

The Clerk: Plaintiff's Exhibits 7-A and 7-B admitted in evidence.

(Plaintiff's Exhibits 7-A and 7-B for identification were received in evidence.) [72]

Mr. Roos: The defendant will offer the exhibit—

The Court: No, no, one thing at a time. The Government has offered 7. Do you wish to make any objection for the record?

Mr. Roos: No objection, your Honor.

The Court: Admitted.

Now what do you want?

Mr. Roos: I would like to offer with the exhibit as the defendant's next in order the exhibit that has been marked Plaintiff's Exhibit No. 6 for identification.

Mr. Petrie: You offer as part of the exhibit the Government's exhibit which has been marked for identification?

The Court: Do you want that to go into the record, too?

Mr. Petrie: If Mr. Roos wants it in, we will offer it as a Government exhibit.

The Court: U. S. Exhibit 6 is admitted in evidence.

(Plaintiff's Exhibit 6 for identification was received in evidence.)

The Court: That disposes of that.

Is there anything else that you want of the witness?

Mr. Petrie: Nothing, your Honor.

Mr. Roos: That is all, sir.

(Witness excused.)

Mr. Petrie: Mr. White, please. [73]

ROBERT WHITE

called as a witness by the Government being first duly sworn, testified as follows:

The Clerk: Will you please state your name to the Court and jury?

The Witness: Robert White.

Direct Examination

By Mr. Petrie:

Q. What is your occupation, Mr. White?

A. Teamster.

Q. What company do you work for?

A. Thompson Brothers.

Q. Is that located in San Francisco?

A. That's right.

Q. Were you working there in the spring of 1957?

A. I was.

Q. Do you recall in the spring of 1957 picking up a load of coils of copper wire from the Federated Metals Company in San Francisco?

(Testimony of Robert White.)

A. I remember that. I wouldn't exactly know the date or anything like that.

Q. You do recall some time in the spring of last year——

A. That's right.

Q. ——picking up such wire, do you not?

A. Yes. [74]

Q. Where did you take it?

A. I took it down to American President Lines, Pier 50.

Q. I direct your attention to this map on the board, Mr. White. Will you orient yourself and show us with the pointer the route that you followed coming into Pier 50?

A. I come off of Army Street; I went south on Third Street up to Mission Rock Street and Fourth, and then I came down here.

Q. From which direction did you come on Third Street, Mr. White?

A. That would be in a southerly direction.

Q. Well, can you tell us whether you came from the right or you came from the left as you are facing the blackboard?

A. Oh, I came from the right.

Q. Where is the Federated Metals Company located?

A. Let's see; I am kind of confused.

Q. Take your time and get yourself oriented. Pier 50, you will notice, is in the bottom left-hand corner.

A. That's right. Army Street would be over here.

(Testimony of Robert White.)

Q. You are pointing to the left of the map, are you not?

A. Yes; Army Street would be over here. I came down Third Street this way, but according from Federated Metals, it would be south. This is kind of——

Q. It is not oriented so that north is at the top?

A. That's right.

Q. Where did you turn off of Third Street? [75]

A. At Mission Rock and Fourth by the fire house.

Q. Did you make a right turn there?

A. Yes.

Q. And from there you went down Mission Rock to the pier? A. That's right.

Q. To what part of the pier did you go with the truck, can you recall?

A. Yes; I went to the back end of C Shed, and I went straight right in here.

Q. Will you take a white pencil and mark with a large W-1 where the wire was unloaded on the pier to the best of your recollection—a large W and a "1" following it.

A. Right at the back entrance of the pier as you come out here.

Q. Did you count the coils onto your truck at the Federated Metals Company?

A. Yes; I did.

Q. Do you have any recollection now how many coils there were?

A. Oh, approximately——

(Testimony of Robert White.)

Q. If you don't, say so. If you are just guessing, don't say so. A. No; I wouldn't.

Q. All right, we will pass that. After you unloaded the coils at the end of Pier 50, what did you do, Mr. White? [76]

A. I went back to the barn.

Q. What route did you follow going back?

A. I went in between the piers over here and went out to Mission Rock over here and cut across Fourth Street over here and then went back to the barn over in here just before you hit the Fourth Street bridge.

Q. Where is the barn located?

A. On Hubbell and Sixth Street.

Q. Did you at any time on that trip, either going to the pier or leaving the pier, travel on Berry Street? Will you point out Berry Street so we will know what we are talking about?

A. Right in here (indicating).

Q. Did you at any time travel with your truck on Berry Street on that trip in that area?

A. No; I did not.

Mr. Petrie: That is all I have.

While Mr. Roos is conferring, I have just one matter.

Q. Mr. White, were the coils, when you took them down to the pier, secured in any way on your truck? A. Yes; they were.

Q. How?

A. Well, there were stakes all the way around;

(Testimony of Robert White.)

then we put boards on the side so the coils can't slip out.

Q. At the end of the pier after the unloading, did you look at the back of the truck and make sure that all of the coils [77] had been taken off?

A. You wouldn't be able to get out of the gate if there was any, not without a tag.

Q. Did you on that occasion? A. Yes.

Q. And all of the coils had been unloaded?

A. Yes.

Mr. Petrie: That's all.

Cross-Examination

By Mr. Roos:

Q. You are sure they were unloaded, Mr. White, because you couldn't get out of the gate of the A.P.L. dock without a pass, is that right?

A. Well, naturally, you have got to deliver your cargo.

Q. You knew you couldn't get out of the A.P.L. dock without a pass? A. Yes.

The Court: You mean if you had any freight on?

The Witness: Any freight.

Mr. Roos: Thank you, Mr. White.

(Witness excused.)

ROSCOE W. PROUDFOOT

called as a witness by the Government, being first duly sworn, testified as follows:

The Clerk: Please state your name to the [78] Court and to the jury.

The Witness: Roscoe W. Proudfoot.

Direct Examination

By Mr. Petrie:

Q. Mr. Proudfoot, for what company do you work?

A. I am retired, but until August 31st I was dock paymaster for American President Lines.

Q. Until what date, sir?

A. August 31, 1958.

Q. Have you brought with you today certain payroll records of the company showing amounts paid to Edgar Harold Teague on March 6, 1957?

A. I can tell you the number of hours he worked.

Q. Do you have the records with you, sir?

A. Yes.

Q. From which you could make that determination?

A. Yes; I have the time cards.

The Court: What name did you say?

Mr. Petrie: Edgar Harold Teague, your Honor.

The Court: You say you have a time card?

The Witness: That's right.

Q. (By Mr. Petrie): That's what you are looking at now?

A. Yes, sir.

Q. According to that time card, for how many

(Testimony of Roscoe W. Proudfoot.)

hours of work was Mr. Teague paid on March 6, 1957? [79] A. Fifteen.

Q. How many of those hours were overtime hours? A. Seven.

Q. Are you able to tell from that time card during what hours Mr. Teague worked on the 6th of March? A. No.

Q. What are the regular hours of work?

A. Straight time hours are from 8:00 until 5:00. Overtime is after 5:00, between 5:00 and 8:00—5:00 p.m. and 8:00 a.m.

Q. Does that time card also show the hours Mr. Teague worked or the hours for which he was paid on March the 7th? A. Yes.

Q. How many hours?

A. Eight hours of straight time.

Q. What about March the 8th?

A. Eight hours of straight time.

Q. March the 9th? Well, that's the end of the week? A. That's right.

Q. What about March 5th?

A. Eight hours straight time.

Q. What about March 4th?

A. Eight hours straight time, seven hours overtime.

Mr. Petrie: I have nothing further.

The Court: Any cross?

Mr. Roos: May I see the records that you [80] have here, please, Mr. Petrie?

Mr. Petrie: This is Wednesday, the 6th (showing records).

(Testimony of Roscoe W. Proudfoot.)

The Court: Mr. Roos, is that additional counsel that sits at the table with you?

Mr. Roos: Yes; Mr. Haid, my partner.

The Court: The jury was not queried as to additional counsel in the matter. We have no way of knowing whether or not any members of the jury are acquainted or have any relationship with the other counsel, who was not entered of record in the case.

Mr. Roos: The firm is of record.

The Court: You signed yourself as attorney for the defendant. Has the Government any objection to the appearance of associate counsel at this time?

Mr. Petrie: No, your Honor. I assume that none of the jurors know Mr. Haid.

The Court: What is his full name?

Mr. Roos: Pardon?

The Court: What is the full name of your partner?

Mr. Roos: Charles M. Haid, Jr.

The Court: Are any of the jurors acquainted in any way with Mr. Charles Haid who is associated with the attorney for the defendant, Mr. Roos, in this matter?

(No response.) [81]

The Court: Proceed.

Q. (By Mr. Roos): Are you familiar with the customs and practices of the job of the standby gang of which Mr. Teague was a member?

A. More or less, yes.

(Testimony of Roscoe W. Proudfoot.)

Q. It is customary, I believe—and correct me if I am wrong—that if the men don't take coffee time or meal time, work right through, they are then credited with overtime instead of that time off that they might have taken? What I am driving at is, if there is a ship due to go out the next day and they are working on board that vessel and there is a press of time and they work right through dinner, they get credit for it, don't they?

A. Oh, yes; yes.

Q. Do you know how long Mr. Teague has been a member of the standby gang?

A. I couldn't say offhand.

Q. He is still presently employed in the same job now as he was in the week of March 8th, 1957?

A. That's right.

Mr. Roos: Mark it for identification, please.

The Clerk: Defendant's Exhibit D marked for identification.

(Certain documents were marked Defendant's Exhibit D for identification.) [82]

Q. (By Mr. Roos): Now, possibly while you are here, Mr. Proudfoot—would there be any objection if I established by this man the payroll records that have been subpoenaed that the other man brought out this morning?

Mr. Petrie: It is out of order; it isn't part of the Government's case.

The Court: Better not put it in out of order.

If you have any motions to make, you have a confused record.

Mr. Petrie: Thank you, Mr. Proudfoot.

The Court: That is all.

Mr. Petrie: Captain Johnson, please.

CARL F. A. JOHNSON

called as a witness by the Government, being first duly sworn, testified as follows:

The Clerk: Please state your name to the Court and to the jury.

The Witness: My name is Carl F. A. Johnson.

Direct Examination

By Mr. Petrie:

Q. What is your occupation, Capt. Johnson?

A. I am a ship master.

Q. What ship are you presently master of?

A. The President Jackson.

Q. Is that in San Francisco now? [83]

A. No; it is in Los Angeles.

Q. When did it arrive in Los Angeles?

A. We arrived in Los Angeles on the—I believe it was the 20th.

Q. The 20th?

A. No, no; that was New York.

Q. Was it some time at the end of last week?

A. Yes; it was Saturday afternoon.

Q. And then you proceeded to San Francisco from Los Angeles, did you? A. Yes.

Q. To appear as a witness in this case?

(Testimony of Carl F. A. Johnson.)

A. Yes.

Q. In the month of March, 1957, what ship were you commanding?

A. The President Taylor.

Q. And did you make a trip in that month from San Francisco to Japan? A. Yes; I did.

Q. When did you leave San Francisco?

A. Well, I had to—I have my log book with me.

Q. You say you have your log book?

A. My log book, yes. We left on March the 9th.

Q. Of 1957? A. Of 1957.

Q. When did you arrive in Japan? [84]

A. We arrived on the 21st of March, 1957.

Q. What port did you first come to in Japan?

A. To Yokohama.

Q. To Yokohama? A. Yes.

Q. What was the date of arrival?

A. March 21st.

Q. Did you make any stops along the way?

A. No, sir.

Q. Does your log book show, Captain, what cargo was loaded aboard the President Taylor at San Francisco? A. No.

Q. It does not? A. No.

Q. After you arrived in Yokohama, did you receive a request to check certain cargo aboard the President Taylor? A. I did.

Q. And as a result of that request, did you make a check of cargo? A. I did.

Q. What cargo did you check?

A. I checked some coils of copper wire.

(Testimony of Carl F. A. Johnson.)

Q. Did you personally count the coils?

A. I did.

Q. On that occasion? [85] A. I did.

Q. Was that on March 21, 1957, the day of your arrival at Yokohama— A. It was.

Q. Or some later date?

A. No; it was on the 21st.

Q. From what office did you receive the request to check the cargo?

A. I received it through the Yokohama office from San Francisco.

Q. The Yokohama office of American President Lines? A. They relayed it to me.

Q. Was anyone with you when you made the check? A. Yes.

Q. Who? A. The Chief Officer, Mr. Bohle.

Q. How do you spell that name?

A. B-o-h-l-e.

Q. Was anyone else with you when the check was made? A. There was a Japanese checker.

Q. Do you remember his name?

A. No. I may have it here. Yes, Yamaguchi Kazuo.

Q. Where were the coils stored aboard the ship, Captain?

A. In No. 3 upper 'tween deck, starboard side.

Q. Were they stored in some hatch or [86] something?

A. They were stored in No. 3 hatch, in the wing.

Q. Was any other part of the cargo with or near the coils?

(Testimony of Carl F. A. Johnson.)

A. There was some mail stowed on the outboard side, on the outside of it. We had——

Q. Was it necessary to remove the mail before you could count the coils? A. Yes.

Q. Were the coils on top of any other cargo?

A. They were on top of some cases of machinery.

Q. Do you recall what kind of machinery, heavy machinery?

A. Well, some of it was heavy, yes.

Q. Was there any kind of covering above the machinery that served as a floor for the coils?

A. Yes.

Q. What? A. Wooden dunnage.

Q. Wooden dunnage? A. Yes.

Q. Pallets or something else?

A. No; it was wooden—regular dunnage boards.

Q. You say you personally counted the coils on that occasion? A. I did.

Q. Did you make a note in your log——

A. I did. [87]

Q. ——about the number of coils that you found? A. I did.

Q. How many coils did you find?

A. 181.

Mr. Roos: Your Honor, I am going to object on the ground that it is incompetent, irrelevant and immaterial; no proper foundation is laid in that Mr. Petrie hasn't yet proven how many coils went aboard the vessel.

The Court: I will overrule the objection.

Q. (By Mr. Petrie): How many coils did you

(Testimony of Carl F. A. Johnson.)

find, Captain? A. 181.

Q. Did the chief mate make a separate count of the coils? A. Yes, sir.

Q. Did his figure correspond to yours?

A. It did.

Q. Did the Japanese checker make a count?

A. Yes.

Q. Did his figures correspond to yours?

A. His figures corresponded.

Q. What effort did you make to make sure that you had found all the coils?

A. Well, we searched the wing afterwards, after we got all the coils out of there and found nothing; no more coils in there.

Q. Did you personally look through the [88] machinery? A. Yes; I did.

Q. When did the boat leave Yokohama?

A. We left Yokohama on the 23rd of March, 1957.

Q. During the time that the boat was in Yokohama, was the hatch in which the coils were stored opened? A. Yes, sir.

Q. Was it accessible to members of the crew?

A. Yes, sir. They were working continuously.

Q. Were the coils of the same size or different sizes, Captain? A. They were various sizes.

Q. Irregular sizes? A. Irregular sizes.

Q. Where did the boat go after it left Yokohama? A. To Kobe, Japan.

Q. Do you know where the coils were unloaded of your personal knowledge?

(Testimony of Carl F. A. Johnson.)

A. Well, I didn't see them being unloaded, but they were unloaded in Kobe.

Q. You weren't present when they were unloaded?
A. No, sir.

Mr. Petrie: I have nothing further.

Cross-Examination

By Mr. Roos:

Q. Captain, is the steamer's copy of the dock receipt a [89] part of records kept aboard the vessel?
A. May I hear that again?

Q. Is the steamer's copy of the dock receipt part of the records kept aboard the vessel?

A. I believe they are. Sometimes we don't get them in time and they are mailed.

Q. Let me show you what purports to be a steamer's copy of the dock receipt covering these 186 coils of wire and ask you if you remember having that aboard ship?

A. Well, I haven't—I didn't see it personally. The chief officer keeps that.

Q. That would be kept by the chief officer?

A. Chief officer.

Q. And it would be kept as one of the official records of the ship?
A. Yes.

Q. In the usual course of business of operating the ship?
A. Correct.

Q. When cargo is checked from the dock to the ship, is it counted?
A. No; not by us.

Q. By——

(Testimony of Carl F. A. Johnson.)

A. Not by the ship's crew personnel.

Q. Who does count it?

A. A dock checker. [90]

Q. And that count of the dock checker is then endorsed on the ship's copy of the dock receipt and signed; is that correct?

A. I believe it is.

Q. And would you look at the document in front of you and would you tell us what those figures and letters mean down at the bottom?

A. L—I don't know if this is a "U" or "T."

Mr. Petrie: Is that, your Honor, a paper with which this witness is familiar?

The Court: I don't know whether we should let go to the jury what something means to the witness.

Mr. Roos: They are well-known abbreviations, your Honor, for various terms—

The Court: You are still trying to get into evidence indirectly something that is capable of direct proof.

Mr. Roos: I am proving it directly, your Honor, by the captain of the ship. It was one of the business records of the ship and in the custody of the ship.

The Court: He hasn't testified that this document was on the ship. I will sustain the objection.

Mr. Roos: He testified, your Honor, it was on the ship in the custody of the chief officer.

The Court: He didn't so testify. You asked him if that would be the manner in which it would be

(Testimony of Carl F. A. Johnson.)

done. He [91] didn't testify that this document was on the ship.

Q. (By Mr. Roos): Do you know whether this document was on the ship or not?

A. I do not know.

Q. Do you know who a John Sheehan is?

A. No, sir.

Q. How would you know what cargo you had on board ship if you didn't have a dock receipt?

A. Well, we have a manifest.

Q. Do you have the manifest with you?

A. The manifest is made up aboard the ship.

Q. Do you have the manifest?

A. I do not have the manifest.

Q. Where is the manifest?

A. The manifest is—the manifest is made up by the purser.

Q. Who was the purser?

The Court: Well, this is taking too long, counsel.

Mr. Roos: Well, I am sorry, your Honor——

The Court: I am not going to permit this examination——

Mr. Roos: It is of some importance to the defendant.

The Court: It is not competent testimony in this case, how a person makes up a manifest. We are concerned only with the charge contained in this indictment, and I shall confine [92] the case to this indictment. I shall repeat to you again that it is the burden of the United States to prove that the wire that is here in the courtroom was stolen by the de-

(Testimony of Carl F. A. Johnson.)

defendant. If they don't prove it, it doesn't make any difference how many manifests were made out by what people.

Mr. Roos: It is of some importance to the defendant, your Honor. If 186 coils of wire were counted aboard this vessel which would make it impossible for five coils to have been stolen from the wharf, your Honor——

The Court: It wouldn't make it impossible at all. If there was direct testimony of the witness who saw the defendant take this wire, it wouldn't make any difference what anybody put on a piece of paper. That evidence would be sufficient if it were produced. I am merely pointing out to you that this particular testimony of this witness is not competent. I so hold. That's the end of that.

Now you may proceed to some other examination.

Q. (By Mr. Roos): Was the wire counted more than once aboard the vessel, Captain?

A. We counted——

Mr. Petrie: If this witness has personal knowledge.

Q. (By Mr. Roos): Was the wire counted more than once aboard the vessel?

A. I counted it once.

Q. Was it counted more than once? [93]

A. Not to my knowledge.

Q. All right, Captain, I will show you a letter and ask you if this letter is in your handwriting?

(Testimony of Carl F. A. Johnson.)

It is also a part of Defendant's Exhibit A for identification. (Showing to counsel.)

Mr. Petrie: All right.

Q. (By Mr. Roos): On the stationery of American President Lines, dated March 27, 1957, aboard the President Taylor and signed "Carl." Was that letter written by you? A. Yes; it is.

Q. Does that letter refresh your recollection that you now recall there was more than one count of that wire, Captain? A. Well——

Q. Just answer my question.

Mr. Petrie: That is not a fair question, your Honor. The witness said he only made one count.

The Witness: May I——

Mr. Roos: I think the record speaks for itself.

The Court: You took the paper away from him. You asked him if the letter refreshed his recollection. Now you don't give him a chance to answer it.

Mr. Roos: Well, Mr. Petrie is doing the objecting. I will let him answer.

Q. Does that refresh your recollection?

The Court: Have you had a chance to look at the letter? [94]

The Witness: Yes; I wrote it. I was told it was counted.

Q. (By Mr. Roos): Would you read that letter out loud for us, Captain?

Mr. Petrie: Your Honor, I don't think it is competent. If Mr. Roos wants to make some point, there's a proper way of doing it. It is a report of what somebody told the captain.

(Testimony of Carl F. A. Johnson.)

The Court: I will not permit the question by which the attorney directs the witness to read the letter out loud, but the last question was whether or not the letter, if you have read it, whether it refreshes your recollection on the subject of how many counts there were made of the merchandise. Does it or doesn't it?

The Witness: It does.

The Court: All right; ask your next question.

Q. (By Mr. Roos): There were two counts made, weren't there, one made in Yokohama?

A. One made in Yokohama——

Q. And a second one made in Kobe.

A. Yes; but it was not made by me.

Q. I didn't ask you who made it, Captain. It was made, was it not?

A. I was told it was made.

Q. You were told it was made; it came to your knowledge [95] and it was reported to you by—a matter of fact, the count was made under your direction, was it not?

A. I don't recall that.

Q. Let me refresh your recollection again by this letter:

“Dear Dunc:

“Please refer to my letter from Yokohama”——

Mr. Petrie: I will object to Mr. Roos reading the letter.

The Court: Let the witness see the letter.

Mr. Roos: I want to read the part of it to

(Testimony of Carl F. A. Johnson.)

specifically refresh his recollection that the witness ordered the count made. The letter reads:

“I had Toller, the third mate”——

The Court: He hasn't said he didn't order the count made. You take the letter away from him; let him read the letter. Give him a chance to see what he said in the letter and then he can answer your question.

Mr. Roos: He has read it three times.

The Court: Now ask your question.

Q. (By Mr. Roos): You have read the letter, Captain? A. Yes; I have; yes.

Q. You are thoroughly familiar with it?

A. Yes.

Q. Does the letter refresh your recollection that you directed the third mate, Toller, to make another count of the [96] coils in Kobe?

A. Actually, it was the chief officer that directed him to do it.

Q. You wrote to Mr. Duncan Ward, did you not?

A. Yes.

Q. And you said, “I had Toller, the third mate, check the coils,” did you not?

A. I have said in there I had. The chief mate acted for me.

Q. And what did the chief mate then report to you? A. He reported——

Mr. Petrie: I will object to this as hearsay, your Honor.

The Court: Is this offered——

(Testimony of Carl F. A. Johnson.)

Mr. Roos: I would like your Honor to read the letter. It might make——

The Court: I will allow the question.

Mr. Roos: Thank you.

Q. What did the chief mate report to you as to the result of that count?

A. He reported that Toller had found 186 coils.

Q. And he also reported that Toller had found five extra coils behind the machinery for Singapore?

A. That's what Toller reported to him.

Q. And you checked this out yourself, didn't you? [97]

A. I checked it—not in Kobe; I checked the coils in Yokohama.

Q. And after receiving a different report in Kobe, you mean you never checked them yourself to see whether Toller was wrong or the chief mate was wrong or whether you were wrong?

A. Because I didn't get the report until the wire was already off the ship.

Q. When did the wire go off the ship?

A. I am not—I don't recall just what day it was.

Q. Would the ship's log show us that, Captain?

A. It does not show the time. It only shows the time the hatches are working.

The Court: Well, the upshot of all this is that you say you counted them and there were 181; that the mate and somebody else counted them later and they reported to you that they found another five and there were 186; is that the upshot of it?

(Testimony of Carl F. A. Johnson.)

The Witness: That's right.

The Court: Do we have to labor it any further?

Q. (By Mr. Roos): And also, Captain, the Japanese checkers in Japan counted those coils off the ship just like the American checkers counted them on board in San Francisco, isn't that correct?

A. That is correct.

Mr. Petrie: Your Honor, I am going to object to [98] that as calling for hearsay from this witness.

The Court: Yes; sustained.

Q. (By Mr. Roos): Weren't you there when the Japanese checkers counted the cargo off?

A. In Kobe?

Q. Yes.

A. I was not present when they counted it, no.

Q. Well, they checked it off just like it was checked off here?

The Court: He can't answer that. I will sustain the objection to that.

Mr. Roos: Did you, Captain, receive a report from the Japanese checkers that there was 186 coils of wire aboard?

Mr. Petrie: I will object to that, your Honor, as calling for hearsay.

Mr. Roos: I have the report here from the A.P.L. records.

Mr. Petrie: I thought perhaps you did, Mr. Roos, but at the same time, your Honor, the Government is prepared to stipulate that 186 coils were unloaded at Kobe, if Mr. Roos will stipulate to the

(Testimony of Carl F. A. Johnson.)

weight certificate of the Japanese weighers that I have here, that he has, also, perhaps. I am not trying to hide anything. I am going to object, your Honor, to the question directed to the hearsay of this witness.

The Court: I will sustain the objection. [99]
Can't you agree on these documents?

Mr. Petrie: We haven't been able to.

Mr. Roos: The first time I knew they existed was at 10:00 o'clock this morning when Mr. Wheel-
don delivered them into court.

The Court: Anything else of the witness?

Mr. Roos: Yes, your Honor.

Q. What is a cargo boat note, Captain?

A. A boat note?

Q. Yes.

A. That is a checker's report of the cargo delivered aboard.

Q. Or taken off? A. Or taken off, yes.

Q. Is that an official ship's record?

A. Yes.

Q. I will show you this cargo boat note and ask you if that is one of the official ship's records of the president Taylor? Was it? A. Yes.

Mr. Roos: We will offer that in evidence, your Honor, as defendant's next in order.

Mr. Petrie: I haven't seen it.

Mr. Roos: I am sure that Mr. Petrie has copies of all of these. [100]

Mr. Petrie: I haven't seen this record.

(Testimony of Carl F. A. Johnson.)

Mr. Roos: Showing the receipt by Senko Checkers Company, Ltd., of 186 coils of copper scrap.

Mr. Petrie: If Mr. Roos is going to read from a document, he hardly needs it in evidence. I don't think there has been an adequate explanation of what it is yet, your Honor, how it is made up, when it is made up, and therefore I am going to object to its admission into evidence at this time.

The Court: How did you get this document?

The Witness: The check—the company that does the checking, I believe in Kobe it is the contractor, and, as they unload the cargo to the dock, they count it and——

The Court: They give the ship a report of their count?

The Witness: A report of the count.

The Court: And what you speak of as the boat note, that is the document that you get from the Japanese checkers as to the quantity unloaded and you take that document and you put it in the records of the ship?

The Witness: That's right.

Mr. Roos: May it be admitted, your Honor?

The Court: Is there any objection to it being admitted? I think you said that you would be willing to stipulate——

Mr. Petrie: I would be willing to stipulate [101] that 186 coils were unloaded at——

The Court: All right, it may be admitted.

Mr. Petrie: ——Kobe, your Honor, not Yokohama.

(Testimony of Carl F. A. Johnson.)

The Court: At Kobe, yes.

The Clerk: You want that as part of Exhibit A?

Mr. Roos: No; I think we will have to separate Exhibit A——

The Court: Can't you cover it by the stipulation that this document of the checkers at Kobe show that 186 coils were checked out of the boat by the Japanese checking concern, and that document was included in the ship's records?

Mr. Roos: That is agreeable if that is stipulated to.

Mr. Petrie: That is agreeable.

The Court: Then you don't need to fill up the record with a lot of documents.

Mr. Roos: Also, while this witness is here, I would like to offer in evidence this letter of March 27, 1957, the letter beginning "Dear Dunc" and signed "Carl."

Mr. Petrie: It is incompetent, your Honor.

The Court: Well, I think the facts have already been testified to. Mark it for identification for what it is worth.

The Clerk: Defendant's Exhibit E marked for identification.

(Letter dated 3/27/57, "Carl" to "Dear Dunc," was marked Defendant's Exhibit E for identification.) [102]

Mr. Roos: What is the ruling on the cargo boat note, your Honor? I would like to have it in, despite the stipulation.

(Testimony of Carl F. A. Johnson.)

Mr. Petrie: There is no objection to the admission.

The Court: All right, put it in.

The Clerk: Defendant's Exhibit F marked for identification.

(Cargo boat note referred to was marked Defendant's Exhibit F.)

The Court: Anything further of this witness now?

Mr. Roos: No, your Honor, I think that is all. Thank you, Captain.

Mr. Petrie: I have some more questions, Mr. Roos. May I have your exhibit, please?

Redirect Examination

By Mr. Petrie:

Q. I notice among the papers that are Defendant's Exhibit A for identification a copy of a certificate of measurement and/or weight. Can you identify that document for us?

Mr. Roos: We object to it, your Honor, as incompetent, irrelevant and immaterial, and hearsay. Mr. Petrie knows better than to offer such a document.

Mr. Petrie: I do not, your Honor. This is a business record just as the boat note or anything else.

The Court: What group of documents are [103] you——

Mr. Petrie: The papers produced by American

(Testimony of Carl F. A. Johnson.)

President Lines through Mr. Wheeldon this morning when counsel for the defense subpoenaed him.

Mr. Roos: To take a word from Mr. Petrie's book, your Honor, this witness is not the proper man to talk about those documents. Those are in Mr. Wheeldon's records, not the ship's records.

Mr. Petrie: Your Honor, if he can talk about the boat note——

Mr. Roos: This is a ship's record, counsel; this is not. This witness isn't familiar with it.

The Court: This is the same certificate that you are referring to, isn't it?

Mr. Roos: No, your Honor.

Mr. Petrie: I think Mr. Roos did not refer to that, your Honor.

The Court: Well, I have got a note here that you had a boat note. Where is that? You offered it in evidence yourself.

Mr. Roos: That is the boat note (handing paper to the Court). That is a ship's record; the other is not.

Mr. Petrie: This is the certificate of the Japanese weigher at Kobe, your Honor, which confirms that 186 coils were unloaded.

Mr. Roos: Just a minute. [104]

Mr. Petrie: Well, we have stipulated that 186 coils were unloaded.

The Court: This is also a part of the——

Mr. Petrie: Company's records.

The Court: ——company's records. I have ad-

(Testimony of Carl F. A. Johnson.)

mitted, at your request, the cargo boat note by the checkers. I will admit the——

Mr. Roos: The cargo boat note, if your Honor please, was a ship's record.

The Court: No, it wasn't. I didn't admit it as a ship's record; I admitted it as a record of the Japanese checkers who furnished it to the boat. This is another one that they furnished to the boat.

Mr. Roos: That is not furnished to the boat, your Honor. It was not furnished until this investigation commenced.

Mr. Petrie: That is not true.

Mr. Roos: It is true.

Mr. Petrie: That statement is without foundation.

Mr. Roos: And I will prove it by Mr. Wheeldon who is the only one in the company who knows it. The captain never saw that weight certificate.

The Court: If the Japanese records are good enough for the number of coils, they are good enough for the weight. [105]

Mr. Roos: I will object to it, your Honor——

The Court: We are talking in terms of justice, so I will admit the other record, too.

Mr. Roos: I object to it as hearsay of the rankest kind.

Mr. Petrie: The Government offers the certificate of weight in evidence.

The Court: Admitted.

Mr. Roos: Objected to as incompetent, irrelevant and immaterial, and hearsay, and not a business

(Testimony of Carl F. A. Johnson.)

record of American President Lines, no opportunity, no foundation laid whatsoever to show that it was accurate.

The Court: Well, then, upon that basis I will strike out the record you put in, because there is nothing to show that that was accurate either. It is the same thing.

The Clerk: Plaintiff's Exhibit 8.

The Court: Do you want your record to remain?

Mr. Roos: The captain identified my record, your Honor. He hasn't identified this.

The Court: All he did was to say that that was the record that was furnished to him by the Japanese checkers.

Mr. Roos: But he identified it. He hasn't identified the weight certificate.

The Court: Well, I am not going to waste any more time on this matter, gentlemen. I will admit that record. [106]

The Clerk: Plaintiff's Exhibit 8 introduced and filed in evidence.

(Weight certificate of Japanese checkers was received in evidence as Plaintiff's Exhibit 8.)

The Court: I don't think the case is going to stand or fall on this. It is half past three in the afternoon and we haven't yet come to the point where we have connected the defendant with this wire here. All we have been talking about is records. I don't think it is going to make any difference whether this record is in evidence or it isn't in evi-

(Testimony of Carl F. A. Johnson.)

dence. I am going to admit it, though, on the ground that it is equally entitled to the consideration of the jury as the other records of the same company which did the checking in the matter.

Mr. Roos: It is not, your Honor, at all. Would you ask the captain if he ever saw that weight certificate?

The Court: I am not admitting it on the ground that the captain had anything to do with it.

Mr. Roos: Who has identified it?

Mr. Petrie: It is a public record.

The Court: It is a part of the record which you, yourself, subpoenaed this morning and asked be produced here by the American President Lines as a part of their records. I am admitting it in evidence.

Mr. Roos: It has never been identified; it is hearsay. [107]

The Court: Well, I am not going to argue about it any more, gentlemen. It is admitted.

Any more questions of this witness?

Mr. Petrie: Your Honor, I would just like to have this witness read the weight on Government's Exhibit 8.

Mr. Roos: The record speaks for itself.

Mr. Petrie: I will read it, then, your Honor. May I?

The Court: All right.

Mr. Roos: I object to counsel reading it. He objected to me reading——

The Court: I have admitted it in evidence, so

(Testimony of Carl F. A. Johnson.)

he is entitled to read it just as you are entitled to read anything that is in evidence.

Mr. Roos: You wouldn't let me read it.

The Court: No; I didn't stop you from reading.

Mr. Petrie: "Certificate of Measurement and/or Weight." By Kobe weighmaster. "The total weight is 21,501 pounds."

I have nothing further from this witness.

Recross-Examination

By Mr. Roos:

Q. Captain, did you ever see this weight certificate before it was shown to you in court here this morning, Plaintiff's Exhibit No. 8, a purported certificate of weight [108] and measurement?

A. I did not. I normally don't see those records.

Q. It is not a record of the President Taylor, is it?

A. It is furnished to the chief officer.

The Court: Are we through with this witness now, gentlemen, finally?

Mr. Petrie: I am, your Honor.

The Court: All right, you may be excused, Captain. Take your records with you.

We will take a brief recess at this time.

(Recess.)

Mr. Petrie: Mr. Press.

SYLVAN JACK PRESS

called as a witness by the Government, being first duly sworn, testified as follows:

The Clerk: Please state your name to the Court and to the jury.

The Witness: Sylvan Jack Press.

Direct Examination

By Mr. Petrie:

Q. Mr. Press, what is your occupation?

A. Now?

Q. First, now, and then I will ask you what you were doing in March, 1957. [109]

A. I work for the Richmond Sanitary Company at the present time.

Q. What were you doing in March, 1957?

A. Working for the Richmond Iron & Metal Company.

Q. What kind of a company is that?

A. That is the buying of salvage.

Q. Buying salvage? A. Yes.

Q. Was the company selling it as well?

A. Buying and selling.

Q. Did you deal in copper wire, among other things? A. Yes, sir.

Q. Now, do you recall—

Mr. Petrie: Your Honor, may I ask another prospective witness to come in for the purpose of identification? That is Mr. Daniels. We don't have him in court because he has been excluded. I think that is the only way this witness can get at it.

The Court: Very well.

(Testimony of Sylvan Jack Press.)

Mr. Petrie: Mr. Daniels, please.

Q. Mr. Press, do you know the defendant, Mr. Teague? A. Mr. Key?

Q. Teague. A. No; I don't know him.

Q. You don't? [110] A. No.

Q. You have been interviewed in connection with this matter by F.B.I. agents? A. Yes, sir.

Q. Do you recall that in the month of March a person came in to see you with regard to some copper wire? A. Yes, sir.

Q. I show you Government's Exhibit 1 in front of you—— A. Yes, sir.

Q. And ask you—with draw that. On that occasion, did you inspect the copper wire?

A. Not to say "inspect"; I looked at it.

Q. Did you look at it?

A. I looked at it because I am merely interested in whether it is copper or whatever it is; but to examine it—automatically I know the grade of copper I look at, and that is all I do in buying.

Q. Where was the copper wire when you looked at it? A. In a station wagon.

Q. What kind of a station wagon, do you recall?

A. That I don't recall. I didn't pay any attention to it at all.

Q. Where was it in the station wagon?

A. In the back end of it.

Q. Was it covered in any way? [111]

A. Partially.

Q. Partially covered with what, Mr. Press?

(Testimony of Sylvan Jack Press.)

A. I believe it was canvas. I believe it was some sort of canvas.

Q. Will you look at these coils of wire that are next to me and tell us, if you can, are these similar in kind? A. Similar in kind, yes.

Q. To the coils that you looked at on that day?

A. Similar in kind.

Q. I am not asking you to say that they are the coils. A. I wouldn't say that it was.

Q. Do you recall the name of the person?

A. I didn't ask him his name.

Q. That spoke to you on that occasion?

A. No; I didn't ask him his name. The only time I ask for a name is if I buy the merchandise.

Q. Do you see him in the courtroom?

A. Yes.

Q. Are you able to recognize and identify the person who brought the wire in on that occasion?

A. Yes, sir.

Q. Point him out, please.

A. The young fellow here.

Q. And is that the person in the blue suit?

A. The young man there, yes. [112]

Q. On what day was that?

A. I don't recall the day.

Q. Can you recall——

The Court: Do you want the witness excluded?

Mr. Roos: Not as far as I am concerned, your Honor.

The Court: Well, you were the one that asked to have the witnesses excluded.

(Testimony of Sylvan Jack Press.)

Mr. Petrie: I think if one is going to be excluded—well, I don't care whether the witness stays or not.

Mr. Roos: It is immaterial to me, your Honor.

The Court: I need a little more from you than that. It was your motion that all the witnesses be excluded. Now all of the witnesses have been excluded. This witness—what did you say his name was?

Mr. Petrie: Mr. Daniels.

The Court: Mr. Daniels was brought in for identification purposes. If you require it, he may be excluded from the courtroom.

Mr. Roos: I have no objection to his remaining in the courtroom.

The Court: All right, go ahead with your examination.

Mr. Petrie: Did you and Mr. Daniels have a discussion about that wire? [113]

A. Yes, sir; as to price.

Q. Was anyone else present?

A. Not when him and I were talking, no; at that time, no.

Q. Where did the discussion take place, in the shop? A. No; outside the building.

Q. Outside the building next to the station wagon? A. Yes; next to the station wagon.

Q. What was the discussion?

A. Well, he asked me my price on it and I stated the price, the price that I would quote him.

Q. What price did you quote?

(Testimony of Sylvan Jack Press.)

A. I don't recollect what it was at that time; somewhere around 30c or something like that. I don't know exactly what it was. That is a year ago, and I don't keep up with those prices. I am not in that business now; he said the price wasn't good enough. He said he should have got more.

Q. Could the price that you quoted him, Mr. Press, have been lower than 30c?

A. It could be lower or higher. All that I could say was the amount that I would give him. I couldn't remember the price that he wanted.

Q. What price was he asking? Do you recall?

A. I don't recollect; a cent or two more than what I was offering.

Q. What else was said by Mr. Daniels? [114]

A. That's all, as far as I remember.

Mr. Roos: I am going to object to what was said by Mr. Daniels as hearsay.

Mr. Petrie: I am not offering it to prove the truth of the statements, but just to show what was said on that occasion.

The Court: If it is not connected up, of course, it would have to be stricken.

Mr. Roos: I am going to object to it as hearsay.

Q. (By Mr. Petrie): Was anything else said by you or Mr. Daniels that you can recall?

A. Not by me, because I was only interested—if I could buy it, okay; if I couldn't buy it, I let it go there.

Q. Did you buy it? A. No, sir.

Q. Before Mr. Daniels left, did anyone else——

(Testimony of Sylvan Jack Press.)

A. Mr. Middleton happened to be in the shed.

Q. Who is Mr. Middleton?

A. Inspector Middleton.

Q. Of the Richmond Police force?

A. Of the Richmond Police. He was there and he came out and saw the material. He took over from there. What happened there I don't know.

Mr. Petrie: Nothing further, your Honor. [115]

Cross-Examination

By Mr. Roos:

Q. Mr. Press, did you take the material out of the station wagon?

A. No, sir; never touched it.

Q. Did you examine it in any way?

A. No, sir.

Q. Even though it was partially covered, you were still able to look at it and see what it was?

A. Because I am accustomed to buying metal, and I knew it was copper when I saw it and the price I could pay for it. That's as far as I went.

Q. For you to see it, it wasn't necessary to remove any covering?

A. No; all I could see was copper. That is all I was interested in, was copper. The price didn't matter. All I was interested in was copper, whether it was bulk, small or big.

Mr. Roos: I think that is all.

The Court: That is all.

Mr. Petrie: Thank you, Mr. Press.

(Witness excused.)

Mr. Petrie: Mr. Middleton, please.

Mr. Roos: I don't know how your Honor ruled, but I will at this time move to strike any testimony of Mr. Press concerning what Mr. Daniels told him as hearsay. [116]

The Court: I will reserve ruling on that motion until all of the Government's evidence is in.

Mr. Roos: Thank you.

ROY SANFORD MIDDLETON

called as a witness by the Government, being first duly sworn, testified as follows:

The Clerk: Please state your name to the Court and to the jury.

The Witness: Roy Sanford Middleton.

Direct Examination

By Mr. Petrie:

Q. What is your occupation, Mr. Middleton?

A. Retired police inspector.

Q. With what police department were you working?

A. City of Richmond, County of Contra Costa, State of California.

Q. Were you working there in March of 1957?

A. I was.

Q. What were your duties in that month?

A. I was assigned to the pawn shop and junk yard details.

Q. And do you recall that on a day in March last year you visited the Richmond Iron & Metal Company?

(Testimony of Roy Sanford Middleton.)

A. I do. It was on the 7th of March, 1957.

Q. Whom did you see there on that [117] occasion?

A. Well, I saw a Mr. William Press—Mr. Jack Press, and, as I was leaving, after checking their records, I met a young man out in the street by the name of Daniels.

Q. You say you met him in the street. Did you overhear any of the conversation between Mr. Daniels and Mr. Jack Press?

A. No; I did not.

Q. After meeting Mr. Daniels, what did you do, Mr. Middleton?

A. Well, as I came out onto the street, I observed Mr. Daniels and Mr. William Press in a conversation.

Q. Don't tell us what they said. A. No.

Q. Just tell us what you did.

A. I then observed some copper wire laying in the back end of a new Chevrolet station wagon.

Q. Was the wire covered or uncovered?

A. It was partially covered by—with a painter's drop cloth or a light piece of canvas.

Q. Did you do anything with that wire?

A. Yes; after I questioned Mr. Daniels, I informed him that due to the large amount of it—

Q. Well, don't tell us what you told him. Did you take possession of the wire?

A. I took possession of the wire at that time, impounded it for safekeeping, for further investigation.

(Testimony of Roy Sanford Middleton.)

Q. Did you take it to the Richmond Police Station? [118] A. I did.

Q. I show you Government's Exhibit 1, Mr. Middleton.

May the witness step down, your Honor?

Have a look at this and tell us if you can identify this wire, Government's Exhibit 2 for identification.

A. To the best of my memory, it resembles very closely that which we impounded on that day.

Q. Did you make any marks on the coils of wire or did you tag it in any way so that you would be able to later identify it? A. No; I didn't.

Q. You did not? A. I did not.

Q. How many coils were there?

A. Five, I believe.

Q. Did you take possession of anything in addition to the coils?

A. Yes; as we were unloading the coils of wire from the station wagon, I observed a shipping tag that fell off of one of the coils, and I also impounded that tag and held that for safekeeping.

Q. Where was that tag? Where did you first notice it?

A. Among the wire on one of the coils. It apparently had been attached; there was a small piece of light wire.

Mr. Roos: I object to that as the opinion and conclusion of the witness. [119]

The Court: "Apparently had been attached" may go out.

Mr. Petrie: That may go out.

(Testimony of Roy Sanford Middleton.)

Q. Where did you find the tag among the wire, on the wire? Was it tied to the wire?

A. No.

Q. Was it resting on the wire? What do you mean by "among the wire"?

A. It was resting on one of the coils of wire.

Q. In the station wagon? A. Yes.

Q. I show you Government's Exhibit 3 for identification and ask you if you can identify that tag?

A. Yes; I can.

Q. How do you identify it? Is that the tag?

A. I remember the one number up in the right-hand corner of the tag in small print, 174.

Q. Did you initial the tag or make any marks on it so that you would later be able to identify it?

A. Not to my memory. I kept it in my possession.

Q. Do you know Agent Barthol of the Federal Bureau of Investigation? A. I do.

Q. Did there come a time when you showed that tag to him? A. I did. [120]

Q. Was that a few days after you took possession of the tag?

A. Yes; it was. I don't recall just how many days; a few days later we were in conversation.

Q. Did there come a time when you delivered the copper wire as well to Agent Barthol?

A. I didn't deliver it; I instructed the Property Clerk of the Richmond Police Department that all the wire in the vault that I had put in there and

(Testimony of Roy Sanford Middleton.)

given Mr. Daniels a receipt for was to be turned over to Mr. Barthol at his request.

Q. Do you know whether or not the wire left the Richmond Police Department?

A. Not to my knowledge.

Q. Where was it stored?

A. In the property vault in the basement of the Hall of Justice.

Q. When did you leave the Department?

A. I left the Department on the first day of July, 1957.

Q. Was the wire still there when you left the Department?

A. To my knowledge. If it had been moved, I knew nothing of it.

Q. What was the last time that you had looked at the wire in that vault?

A. Oh, approximately two weeks or so after I first impounded it.

Q. And was that the last time that you looked at the wire? [121]

A. To my knowledge, yes.

Q. Did Mr. Daniels tell you on that occasion what——

Mr. Roos: Just a second; we will object to the question before it is asked as leading and suggestive, calling for hearsay, not binding on the defendant.

Mr. Petrie: I hadn't finished the question.

The Court: Yes.

Mr. Roos: I think that——

(Testimony of Roy Sanford Middleton.)

The Court: I can't rule on it until I have the question.

Mr. Roos: I will cite the asking of the question as misconduct before it is asked.

The Court: You can't cite something that a fellow hasn't done until he does it. That's a new wrinkle in judicial procedure. Now, what is it you want to ask?

Q. (By Mr. Petrie): Did Mr. Daniels tell you on that occasion what relationship he bore to Mr. Teague?

Mr. Roos: I object to the question as being hearsay.

Mr. Petrie: I will withdraw it. I will call Mr. Daniels.

The Court: Anything else? Are you through with this witness?

Mr. Petrie: I am.

The Court: Any questions? [122]

Mr. Roos: No questions.

Mr. Petrie: That is all, sir.

(Witness excused.)

Mr. Petrie: I am going to call Mr. Daniels next, your Honor, reluctantly, because of the relationship he bears, but that is my next witness.

JAMES E. DANIELS

called as a witness by the Government, being first duly sworn, testified as follows:

The Clerk: Please state your name to the Court and to the jury.

The Witness: James Edward Daniels.

Direct Examination

By Mr. Petrie:

Q. Mr. Daniels, where do you work?

A. At General Cable & Manufacturing Company.

Q. How long have you worked there, sir?

A. Two years.

Q. Were you working there, then in March, 1957?

A. Yes; I was.

Q. Where is that located?

A. It is in Emeryville.

Q. Do you know the defendant, Mr. Teague?

A. Yes; I do.

Q. Do you bear any relationship to him? [123]

A. Yes; I do.

Q. What is that relationship?

A. Stepfather. He is my stepfather.

Q. Do you live at home with Mr. Teague?

A. Yes, sir.

Q. How long have you lived there?

A. Oh, approximately ten years, I would say.

Q. About ten years, you say? A. Yes, sir.

Q. How old are you? A. Twenty-two.

Q. I will ask you, Mr. Daniels, to look at Gov-

(Testimony of James E. Daniels.)

ernment's Exhibit 2 for identification, the coils of copper wire that are next to me. Have you ever seen those before or ones similar in kind if you can't tell that you have seen those particular ones before?

A. Well, yes; I have seen similar in kind.

Q. When? In what month and what year?

A. I don't recall.

Q. You don't recall? Was it this year or was it last year? A. Last year.

Q. Some time in 1957. Can you recall approximately the month of the year?

A. It was in the winter of 1957, I am sure. [124]

Q. In the winter of 1957. Could it have been in March, 1957? A. Yes; it could be.

Q. Where did you first see those coils of wire?

A. In the back of my dad's station wagon.

Q. What kind of station wagon was that?

A. A 1957 Chevrolet.

Q. Where was the station wagon at the time?

A. It was in front of our house.

Q. Can you recall what time of the day or night this was?

A. Yes; it was 8:00 o'clock in the morning.

Q. Eight o'clock in the morning?

A. I had just gotten off work.

Q. Were you alone at the time or was your stepfather with you?

A. I had just come in off work.

Q. Oh, you were working the night shift or something of that sort? A. Yes, sir.

Q. Were you just coming home from work?

(Testimony of James E. Daniels.)

A. Yes, sir.

Q. Where were the coils when you first saw them?

A. They were in the back of the station wagon.

Q. Were they covered or uncovered?

A. I didn't notice. [125]

Q. You say you did not notice whether they were covered or not?

A. Well, they must have been uncovered because I seen the wire. I didn't notice if there was any cover.

Q. Were you using the station wagon at the time? Had you taken the station wagon to work?

A. No, I had not.

Q. Did you just happen to notice them in the station wagon as you were passing by it, or did you go to drive the station wagon somewhere?

A. I was instructed to put a radio in the station wagon.

Q. Who gave you those instructions?

A. My step-father.

Q. After you came home that morning?

A. Yes, sir.

Q. Did your step-father give you any instructions about the wire in the station wagon?

A. No, sir, not in the way of instructions.

Q. Did he say anything to you about it?

A. He just asked me if I might—if I had time to see if I could price it.

Q. Did he tell you that the wire was in the station wagon before you went out to the station wagon—before you saw it?

(Testimony of James E. Daniels.)

A. No, sir, he just mentioned the wire and sort of casual-like said, "If you get a chance"—he never told me to [126] do anything; he just asked me if I didn't have nothing to do, if I got a chance——

Q. To price the wire?

A. To price the wire, yes, sir.

Q. Did he tell you to sell it? A. No, sir.

Q. What did you do after getting into the station wagon? Did you take the wire somewhere to price it?

A. No, sir.

Q. Didn't you take it to the Richmond Iron & Metal Company?

A. The first thing I did was go to J. V. Jones car lot to see about the radio. That was my instructions.

Q. Oh, I see. You did that first?

A. Oh, yes.

Q. Did you get the radio put into the car?

A. No, sir, not that day.

Q. What did you do after seeing about the radio?

A. Well, they told me that they were pretty busy at the shop and they couldn't have the radio put in that day. I think—now, I am not too positive about this, because I had the car two days and I don't know which—the radio I got on the second day. Then I just decided to drive it around a little bit and take it out on the highway. It was a new car and it impressed me quite a bit.

Q. And then what did you do? [127]

(Testimony of James E. Daniels.)

A. I just started driving on the freeway—the Bayshore.

The Court: Did you take the car to the Richmond—what is the name?

Mr. Petrie: The Richmond Iron & Metal Company.

The Court: Did you take it to the Richmond Iron & Metal Company?

The Witness: No, sir, not at first.

The Court: Whether you did it first or second, did you take the car there?

The Witness: Yes, sir.

The Court: Were you there at the Richmond Tire Company?

The Witness: Yes, I was.

The Court: Go ahead.

Q. (By Mr. Petrie): What did you do at the Richmond Iron & Metal?

A. I asked the man in charge how much the copper was worth.

Q. Was that Mr. Jack Press who just testified here a few minutes ago?

A. Yes, that was the man.

Q. What did he say to you?

A. He told me that—he gave a pretty broad statement as to he could pay anywheres from—up to 23 cents or 24 cents a pound—in there.

Q. Did you ask Mr. Press to buy the wire from you? [128]

A. Well, I don't believe I came out with those words, but I kind of meant to give him that im-

(Testimony of James E. Daniels.)

pression, that I was selling the wire, yes, sir. That was the only way I figured I could get an honest price.

Q. Don't you recall that your step-father told you what price you should get for the wire?

A. No, sir.

Q. Don't you recall that he told you that you should get between 30 and 35 cents for the wire?

A. No, sir, I don't recall that at all.

Q. Do you remember discussing this matter with Officer Middleton on March 11, 1957?

A. Yes, sir.

Q. Didn't you tell Officer Middleton on that occasion that that is what your step-father told you about getting 30 to 35 cents for the wire?

A. No, sir, I don't believe I made that statement.

Q. You have no recollection of that?

A. No, sir.

Q. Did you go anywhere else to get a price on the wire besides the Richmond Iron & Metal Company?

A. I had stopped at a place in Oakland.

Q. What place was that, Mr. Daniels?

A. I don't recall. It was down in the industrial section; there were quite a few factories. It happened to be near the freeway. [129]

Q. Did you get a price on the wire at that place?

A. Not on that wire, no, sir. I just asked the man about copper in general, what price he paid for copper. The person there didn't even see it.

(Testimony of James E. Daniels.)

Q. The person at the first place did not see the wire?

A. No, he did not. I just happened to stop by.

Mr. Petrie: That is all.

Cross-Examination

By Mr. Roos:

Q. Jim, you live with your mother and your step-father, Mr. Teague; is that correct?

A. Yes.

Q. Who else lives in the house?

A. My two sisters and at that time my two brothers.

Q. And they are children of Mr. Teague and your mother?

A. Well, sir, I have—I had a half-brother and I have a half-sister, but I have a 17-year-old sister who is completely my sister and a 20-year-old brother.

Q. And since your mother and Mr. Teague were married, he has been the only father you have known; is that correct?

A. That is correct.

Q. And this station wagon was brand new, was it?

A. Brand new, sir.

Q. Your dad had acquired it the day before, is that right?

A. Yes. [130]

Q. That would be March 6th; this was March 7th?

A. Yes, sir, that's correct.

Mr. Roos: I have no further questions.

Q. (By Mr. Petrie): Do you know when your father acquired—your step-father acquired the sta-

(Testimony of James E. Daniels.)

tion wagon? Were you with him when he actually took it from the dealer? A. No, sir.

Mr. Petrie: That is all.

Q. (By Mr. Roos): It was the first day that you saw the station wagon, the day before this incident about the wire in Richmond that Mr. Petrie asked you about?

A. I don't recall that, sir. I was working nights at the time and my father was working days and sometimes we would go five or six days without seeing each other. I don't recall when I had seen him.

Q. In any event, this day when you got the instructions to have the radio put in was the first day you ever saw the car? A. Yes, sir.

Mr. Roos: That is all. Thank you.

Mr. Petrie: Thank you.

The Court: Have you got more witnesses?

Mr. Petrie: Yes, your Honor, I do.

The Court: Any short one?

Mr. Petrie: Captain Sledge.

The Court: Is this a short witness? [131]

Mr. Petrie: I think he won't take too long, your Honor.

The Court: All right.

Mr. Petrie: If it does run too long, perhaps we can just interrupt his testimony.

The Court: Very well.

PHILIP D. SLEDGE

called as a witness by the Government, being first duly sworn, testified as follows:

The Clerk: Please state your name to the Court and to the jury.

The Witness: Philip D. Sledge.

Direct Examination

By Mr. Petrie:

Q. What is your occupation, sir?

A. I am chief security officer of the American President Lines.

Q. How long have you held that position?

A. Ten and a half years.

Q. You held that position, then, in March of 1957? A. I did.

Q. Do you know the defendant, Mr. Teague?

A. I do.

Q. Do you see him in court?

A. Yes, sir, sitting there. [132]

Q. Sitting with the lady back there?

A. Yes, sir.

Q. In the blue suit. How long have you known him, Captain? A. Over five years.

Q. Has he been working for American President Lines throughout that time? A. Yes, sir.

Q. In what position, sir?

A. Mr. Teague is a leader man in the hull painting gang.

Q. Where is his office or his shop? Where was it in March of 1957?

(Testimony of Philip D. Sledge.)

A. It is located on Pier 50.

Q. Will you look at the map that we have on the blackboard, Captain, or the diagram; take the pointer and orient yourself—Pier 50 is in the bottom left-hand corner—and show us with the pointer, if you will, where Mr. Teague was working in March of '57.

A. The office that Mr. Teague works from is in the Utility Building.

Q. That is the building at the——

A. That is this building.

Q. You are pointing to a building at the bottom of Pier 50?

A. That is correct, yes, sir. The paint shop——

Q. Pardon me; it is labeled "Utility Building," is it not? [133]

A. Utility Building.

Q. You were going to talk about the paint shop?

A. The paint shop where most of Mr. Teague's material is taken from is in the rear of the Utility Building.

Q. Please don't talk about the material. My question was, where was Mr. Teague working on Pier to? In the paint shop?

A. No.

Q. Or in the Utility Building?

A. No.

Q. Or somewhere else?

A. His work is on the various vessels that are docked alongside of the Terminal.

Q. Are vessels painted every time they come into port?

A. Practically every time, yes.

(Testimony of Philip D. Sledge.)

Q. And this paint group or paint gang does that painting, does it not?

A. They do the hull painting.

Q. The hull painting? A. Yes.

Q. And Mr. Teague is the leader of that group; is that correct? A. That is correct.

Q. When Mr. Teague wasn't painting and he was working, where was he on Pier 50, if he was any place?

A. Various locations within the various sheds on the terminal. It would depend on the nature of the work that they [134] were doing at the time. They have no particular location.

Q. But the paint for the painting was stored in the paint shop at the end of Pier 50?

A. That is correct, sir.

Q. Do you know what kind of car Mr. Teague drove in March of 1957?

A. Mr. Teague had a Chevrolet station wagon.

Q. Do you recall the color, sir?

A. It was white and red—white with red trim.

Q. Can you say whether or not you saw Mr. Teague's station wagon parked on that pier, on Pier 50, on March 6, 1957?

A. Yes, I did see it.

Q. Now, how are you able to say that you saw it on that particular date, Captain Sledge?

A. I noticed cars parked in the evening of March 6th. They were parked actually in what is an illegal zone.

Q. And what is a legal or an illegal zone?

(Testimony of Philip D. Sledge.)

A. It is an illegal zone. I noticed those cars. At the time I didn't stop to examine them.

Q. Did something happen a few days after March 6th to make you go back and check the records to determine the date on which you saw Mr. Teague's car parked down there?

A. It did, sir.

Q. Was some report made to you of a loss?

A. Yes, sir. [135]

Q. On what day was that report made to you?

A. It was made on March the 8th.

Q. Will you show us on the diagram, Capt. Sledge, where Mr. Teague's station wagon was parked on Pier 50 on the night of March 6th?

A. When I observed the station wagon, it was parked approximately at this location. This is a bulkhead directly in front of the Utility Building.

Q. Of the Utility Building? A. Yes, sir.

Q. Please return to your seat. After you received that report of loss, Captain, did you have a discussion with Mr. Teague about the loss?

A. I did.

Q. When and where did that discussion take place?

A. In my office at Pier 50 on the afternoon of March 8th, at approximately 4:00 o'clock.

Q. Was anyone else present besides yourself and Mr. Teague?

A. Yes, sir. Two of my sergeants were in the office at that time.

Q. What are their names?

(Testimony of Philip D. Sledge.)

A. Sgt. Foley and Sgt. Murphy.

Q. Going back to the station wagon a minute, Capt. Sledge, what time of the day or night did you notice the station wagon?

A. It was after 7:00 o'clock; I would say approximately 7:30. [136]

Q. How are you able to fix the time, sir?

A. I had checked the President Taylor which was working at Pier 50-C and I had done so after the night gang had begun working. That would be at 7:00 o'clock at night.

Q. Will you show us where Pier 50-C is on the diagram where the President Taylor was working?

A. This is Pier 50-C. The Taylor was docked alongside.

Q. Did you notice any wire on the pier on that occasion?

A. Not on the pier itself.

Q. Did you notice some copper wire on that occasion?

A. I did, sir.

Q. Where was the wire stored?

A. The wire was stowed in back of Pier 50-C.

Q. Show us on the map again where that was?

A. It was on the outside of the shed area in approximately this location.

Q. Was other cargo stored in that place as well?

A. Some oil drums were stored there.

Q. Anything else there?

A. No, sir, not to my knowledge.

Q. Now, coming back to the discussion with Mr. Teague in your office, tell us as best you can recall what you said and what Mr. Teague said and what

(Testimony of Philip D. Sledge.)

anyone else said in Mr. Teague's presence on that occasion.

Mr. Roos: To which we are going to object, [137] if your Honor please, on the ground that it is hearsay, not binding on the defendant. If it is the intention to show any admissions of the defendant, I am going to object that no corpus delicti has been proved in this case.

The Court: I will overrule the objection.

The Witness: I had received a report——

Mr. Petrie: Don't tell us what the report was.

The Court: Just what was said between you and the defendant.

The Witness: I asked Mr. Teague to come to my office. When he did so, I told him that I had received a report on some missing copper wire and asked him what he knew about it.

Q. (By Mr. Petrie): What did he say?

A. His first remark is, "Where is my wire and when am I going to get it back?" I told him that I didn't know, but I would be interested in hearing how he acquired the wire.

Q. What did he say?

A. Mr. Teague said that he had found the wire on the street.

Q. Did he tell you on what street he found the wire? A. Yes, sir.

Q. On what street?

A. He told me he had found the wire on Berry Street.

(Testimony of Philip D. Sledge.)

Q. Will you return to the diagram, Captain, and point out [138] Berry Street on the diagram?

A. This is Berry Street (indicating).

Q. That is the street running diagonally in the upper right-hand corner of the diagram, is it not?

A. Yes, sir, it runs off of Third Street.

Q. Did Mr. Teague tell you where on Berry Street he found the wire? A. He did, sir.

Q. Where? Can you point out again on the diagram?

A. I asked where he had found the wire, and he told me on Berry Street. I asked where, and he said approximately 150 or 200 feet off Third Street. That would make it about in this location.

Q. Will you mark that location with "T-1," a large "T-1"?

A. (The witness marked on the diagram.)

Q. And did he tell you where the wire was at the time he found it? Was it in the street or on the sidewalk?

A. He said the wire was in the street.

Q. In the street? A. Yes, sir.

Q. Were all the coils of the wire together?

A. So he stated.

Q. Did Mr. Teague tell you anything else about finding the wire?

A. Only that he was on his way home, and, as he turned off [139] Third Street, saw this wire, stopped and picked it up.

Q. Was there any further discussion between you

(Testimony of Philip D. Sledge.)

and Mr. Teague on this occasion at your office about the wire?

A. I asked Mr. Teague if he knew that this wire was part of a cargo that had been in custody of the company.

Q. What did he say?

A. He said that he did not.

Q. Was anything else said between you and Mr. Teague on this occasion about the wire?

A. I told Mr. Teague that we had reason to believe that the wire in question was cargo, was part of a foreign shipment, and it was my intention to report the information in my possession to the F.B.I.

Q. Did Mr. Teague say anything else to you on that occasion about the wire?

A. Nothing except to repeat the story that he had found the wire on the street.

Q. On Berry Street? A. Yes, sir.

Q. Did he tell you what time in the evening it was when he found the wire going home?

A. I don't believe the time was mentioned at that time, sir.

Q. Did he tell you what time of day it was when he went home, whether it was afternoon or [140] evening?

A. No, he said he found it that night on his way home.

Q. You have told us all that you can recall about the discussion?

A. All that I recall, yes, sir.

Mr. Petrie: I have nothing further.

(Testimony of Philip D. Sledge.)

The Court: I guess you want to have some cross-examination.

We will take a recess until tomorrow morning at 10:00 o'clock, members of the jury. I hope it will cool off a little bit in the morning. It is very hard to get any ventilation in here. It may be that our favorite fog will be in by tomorrow morning. Will you please come back tomorrow morning at 10:00 o'clock?

(Recess to Wednesday, September 17, 1958,
at 10:00 o'clock a.m.) [141]

Wednesday, September 17, 1958—10 A.M.

The Clerk: United States versus Edgar Harold Teague for further trial. Philip D. Sledge on the witness stand.

PHILIP D. SLEDGE

called as a witness by the Government, being previously sworn, resumed the stand and testified further as follows:

The Court: The direct examination has been finished?

Mr. Petrie: Yes, your Honor.

Cross-Examination

By Mr. Roos:

Q. Mr. Sledge, I understand that you have been Chief Security Officer for A.P.L. for the past ten and a half years; is that correct?

A. That is correct, sir.

(Testimony of Philip D. Sledge.)

Q. What do your duties consist of in that job?

A. The security of A.P.L. terminals and vessels in the San Francisco Bay Area. I have charge of the guard service.

Q. And part of that is security of cargo after it has been delivered to the dock or after it has arrived at the dock?

A. Yes, sir.

Q. And I presume the security system that was set up there was set up by you; is that correct?

A. Yes, sir. [142]

Q. And it is set up to prevent pilferage from the docks, or is that one of its purposes?

A. Yes, sir.

Q. There has been no change, I take it, in the general physical conditions of Pier 50 that are outlined on that diagram on the board there since between March of 1957 and the present, has there? Is the physical setup generally the same?

A. I believe so, sir. Any changes has been very minor.

Q. I would like to show you a number of pictures, Mr. Sledge. Would you say that this picture is a fair representation in general of the parking area which appears on this diagram to be labelled "Depressed Area"?

A. Well, this picture does not show the parking area as a whole, sir. It shows a part of it.

Q. But it is a fair representation of the portion that it does show, is it?

A. Of a portion of it, yes.

Q. And the portion that it shows—correct me if

(Testimony of Philip D. Sledge.)

I am wrong—would be generally this portion running down along the side of Shed C where this station wagon was parked?

A. It would seem to be so.

Q. And this is the Utility Building along here, is it, this building behind the parked automobiles?

A. No, I don't believe it is.

Q. What is it, then? [143]

A. This view is taken from the valley parking area?

Q. No, I asked you if that is a view of the parking area and if this shed behind the many automobiles is——

A. This is not the Utility Building; this is a view of one of the sheds.

Q. What shed is that?

A. From the angle in which this picture is taken, it is difficult to say.

Q. Can you orient yourself from the railroad tracks to the left of the picture?

A. This appears to be one of the sheds; I would say 50-D. It definitely is not the Utility Building.

Q. Where on the diagram do the double line of railroad tracks run?

A. The double line on the valley side, as we know it, of each shed—double lines of tracks along Shed D, double lines of track along Shed C and there are also double lines of tracks on the stern of this ship you see.

The Court: I didn't hear what you said.

The Witness: There are double lines of tracks

(Testimony of Philip D. Sledge.)

on the stringer sides of each pier as well as the valley side.

The Court: Then you identify this shed as Shed D, is it?

The Witness: No, I do not. From the angle in which this picture is taken, I say it doesn't appear to me, but [144] it does appear——

Q. (By Mr. Roos): What is the building at the back of it?

A. That appears to me to be the Utility Building. It is a very poor picture, but I would say this is the Utility Building.

Q. And then this building on the other side of the freight cars would be what?

A. Apparently Shed C.

Q. All right. Would you mind marking on the picture with an arrow and write "Shed C" upon what you say is Shed C?

A. I can't definitely say that it is from that picture. I can only say that it is a very poor picture. It does not show the area at all in its true relation one to the other.

Q. But it does show a portion of the parking area, though?

A. It shows a portion that could be our parking area; I can't definitely state that it is.

Mr. Roos: We will mark this for identification, may we, at this time?

The Clerk: Defendant's Exhibit G marked for identification.

(Testimony of Philip D. Sledge.)

(Photograph of parking lot was marked Defendant's Exhibit G for identification.)

Q. (By Mr. Roos): Can you identify this picture for us, Captain? [145]

A. Yes, sir, the sign in the picture is over the main entrance to Pier 50, our terminal. The structure in the center is our gate shack or guard shack at the entrance to the terminal.

Q. And that picture is a picture of the entrance to your terminal; is that correct?

A. That is correct.

Q. Taken from the outside looking in?

A. Yes, sir.

Q. And that is a fair representation of what it purports to be, is it not? A. Yes, it is.

Mr. Roos: We will offer this as defendant's next in evidence.

Mr. Petrie: No objection.

The Court: Defendant's Exhibit H introduced and filed into evidence.

(Photo of A.P.L. Terminal and gate received in evidence as Defendant's Exhibit H.)

Q. (By Mr. Roos): And I will show you this picture and ask you if that is a fair representation of the same subject matter as in Defendant's H in evidence taken from the inside looking out?

A. Yes, sir, it is.

Mr. Roos: Thank you, sir. May this be ad-

(Testimony of Philip D. Sledge.)

mitted [146] your Honor, as defendant's next in order?

Mr. Petrie: No objection, your Honor.

The Clerk: Defendant's Exhibit I introduced and filed into evidence.

(The photo referred to was received in evidence as Defendant's Exhibit I.)

Q. (By Mr. Roos): And to the right of this photograph, Captain, there is a sign that only partially appears in the picture. Does that sign in full read "All vehicles must stop for inspection"?

A. That is correct. It reads "All vehicles must stop for inspection." On the one side and on the opposite side, "Must stop for directions."

Q. And the "All vehicles must stop for inspection" side is faced so that vehicles going out of the pier see that side? A. Correct, sir.

Q. And I will show you another picture and ask you if that is the same general area looking out of the A.P.L. terminal but taken from a point farther inside the terminal than the last picture.

A. Yes, sir, it is. This appears to be taken from the area between Sheds B and D, approximately the center portion of the terminal as you face the gate.

Mr. Roos: Thank you. I will offer that as defendant's next in order. [147]

Mr. Petrie: No objection.

The Clerk: Defendant's Exhibit J introduced and filed into evidence.

(Testimony of Philip D. Sledge.)

(The photo referred to was received in evidence as Defendant's Exhibit J.)

Q. (By Mr. Roos): This parking area at that pier is the area which is labeled on this diagram "Depressed Area," is it not? A. Yes, sir.

Q. And that area accommodates several hundred cars, would you say?

A. We have parked as many as 350 cars there on occasions. It depends, of course, upon conditions. That is occasionally used for cargo as well as for parking purposes.

Q. And this shack that appears in the approximate center of Defendant's Exhibit H, that is a shack for the watchman; is that correct?

A. Yes, sir.

Q. And there is a watchman on duty in that shack, 24 hours of each and every day, is there not?

A. Yes, sir.

Q. And that was true also in March of 1957?

A. It was.

Q. All of that parking area is private property of American President Lines, is it not? [148]

A. Yes, sir.

Q. I believe you testified in response to a question Mr. Petrie asked you—he used the term rather than yourself; he said, "Did you receive a report of loss on March 8, 1957?" And you said, "Yes." What you meant was that you received a report or an inquiry from the F.B.I. concerning these coils of copper wire, is that correct? A. No, sir.

(Testimony of Philip D. Sledge.)

Q. You did not? A. No, sir.

Q. Did you receive it from the Richmond Police Department? A. No, sir.

Q. Do you have the report that you received?

A. The report was given to me verbally by one of our company officials, the original report.

Q. The original report was given, and do you know where he received the report?

A. I know what he told me at that time, yes.

Q. And he told you at the time that he received it from the F.B.I., didn't he?

A. No, sir, he did not.

Q. Or from the Richmond Police Department?

A. No, sir.

Q. He did not? A. No, sir. [149]

Q. Did you ever receive any written report from anyone? A. On the subject of this wire?

Q. Yes. A. No, sir, I did not.

Q. To your knowledge, Mr. Sledge, Federated Metals has never made any claim to the ownership of the wire which is in evidence as Plaintiff's Exhibit 2, has it?

Mr. Petrie: I will object to it as irrelevant, your Honor.

The Court: Sustained.

Q. (By Mr. Roos): To your knowledge, Mr. Sledge, has the ultimate consignee in Japan ever made any claim to American President Lines that it is the owner of the wire admitted in evidence?

Mr. Petrie: I will object to that as irrelevant, your Honor.

(Testimony of Philip D. Sledge.)

The Court: Made any claim—would you read the question?

(Question read by the reporter.)

Mr. Roos: May I rephrase the question, your Honor?

Q. To your knowledge, Mr. Sledge, has the ultimate consignee in Japan—that is the ultimate consignee of the shipment of copper wire shipped aboard the President Taylor on or about March 7 of 1957, ever made any claim that it was the [150] owner of the five coils of copper wire which are Plaintiff's Exhibit No. 2?

Mr. Petrie: I will object to that as irrelevant, your Honor.

The Court: Claim to whom?

Mr. Roos: Claim to American President Lines or any other person, to your knowledge.

The Court: Sustained on the ground that it is calling for hearsay.

Mr. Roos: I am asking for his own knowledge, your Honor.

Q. Have you ever received a claim?

The Court: You may ask him if he ever got a claim.

Q. (By Mr. Roos): Did you ever receive a claim from the ultimate consignee in Japan of the shipment of wire aboard the President Taylor that it claimed to be the owner of these five coils of copper wire?

(Testimony of Philip D. Sledge.)

A. No, sir; that wouldn't come under my jurisdiction.

Q. Have you ever received such a claim from Brandeis, Goldschmidt & Co., Inc.?

A. I have never personally received a claim.

Q. Have you ever received such a claim from Federated Metals, the vendor of the wire?

A. Not personally.

Q. Have you ever received a claim from any insurance company? [151]

A. Not personally.

Q. Does A.P.L. claim to own this wire?

The Court: Sustained. It calls for hearsay.

Mr. Roos: I am sorry; you're right.

Q. Do you know——

The Court: If you want to get any data of this kind in, you have people subpoenaed here from American President Lines. You are wasting time asking a man who has nothing to do with it except to guard the premises about matters of this kind. He can't know about it.

Q. (By Mr. Roos): Do you know whether or not A.P.L. claims to own the wire that is in evidence here, Plaintiff's Exhibit 2?

The Court: Sustained on the ground that it is hearsay.

Mr. Roos: If he knows, your Honor, it isn't hearsay.

The Court: He can't know except from what somebody told him.

(Testimony of Philip D. Sledge.)

Mr. Roos: It is a corporation, your Honor. It can only act through its agents.

The Court: Let's not waste time on it. That is obvious. Every lawyer knows that. It is just taking up time. I am not stopping you from inquiring into this matter, but not through this witness.

Q. (By Mr. Roos): Has any person other than the [152] defendant Edward Teague to you personally ever claimed to be the owner of this wire, the wire in evidence as Plaintiff's Exhibit No. 2?

A. No, sir.

Q. On March 6, 1957, how many vessels were docked at the A.P.L. terminal?

A. I don't recall the number. We had one vessel that I am sure of, the President Taylor. That is the only one I can be sure of.

Q. Was it the only vessel, or do you know whether there was one or more other vessels?

A. There may have been other vessels. We frequently have as many as five at the terminal.

Q. How many people were employed in the vicinity of Pier 50 by A.P.L. on that date, roughly?

A. I couldn't estimate that accurately, sir.

Q. It would be in the hundreds, wouldn't it?

A. It depends upon the time you have reference to; it would vary from hour to hour.

Q. What was the largest number of people that you would estimate were employed on or around Pier 50 on March 6, 1957.

A. I couldn't estimate that without having access to records. Our employees down there are casual

(Testimony of Philip D. Sledge.)

employees ordered in as we need them. We may have 350 or 400 in one day and ten the next. [153]

Q. The President Taylor was loading that day, was it? A. Yes, sir.

Q. So there would be the ship's crew on board, would there not?

A. There would be a skeleton crew.

Q. And there would be a full crew of longshoremen? A. I believe so.

Q. And there would be all the regular office and other employees of American President Lines?

A. During the day hours there would be.

Q. And if there were any other crews there, there would be the ship crews of those vessels?

A. Yes, sir.

Q. And possibly also longshore crews working aboard those vessels?

A. If there were other vessels working at that particular time.

Mr. Roos: Just a moment, your Honor.

Q. I presume, Captain, American President Lines has strict rules concerning honesty of its employees? A. Yes, sir.

The Court: Sustain the objection. That is not a subject the jury can properly consider. What is meant by "strict rules"? What information does that give the jury? I will sustain the objection. [154]

Mr. Roos: I have nothing further. Thank you.

(Testimony of Philip D. Sledge.)

Redirect Examination

By Mr. Petrie:

Q. Will you show us on the diagram, sir, where the guard house or guard shack is at the main entrance to Pier 50?

A. This structure here, sir.

Q. Is that structure labeled in any way on the diagram? A. Yes, it is, "Guard House."

Q. Guard House? A. Yes, sir.

Q. Will you show us again where you saw the defendant's car, station wagon, on the night of March 6th?

A. In approximately this location (indicating).

Q. In front of the Utility Building?

A. In front of the Utility Building, I would say.

Q. How far is it, approximately, from the guard house to the place where you saw the defendant's car? A. It is approximately 1,700 feet.

Q. You have marked with a W-1 the spot where the wire was stored——

Mr. Roos: I am going to object to this, your Honor, as improper cross-examination. He is merely rehashing the direct testimony, your Honor.

Mr. Petrie: I am not, your Honor.

Mr. Roos: I didn't go into this matter. [155]

Mr. Petrie: Mr. Roos asked if there was a guard on duty 24 hours a day. I suppose he is going to argue from that that the guard should have seen

(Testimony of Philip D. Sledge.)

the wire being taken. I want to show that the wire and the defendant's car were a long ways from the guard house. I think it is proper redirect.

The Court: You have established the fact, he says 1,700 feet.

Mr. Petrie: Yes, to the car, your Honor.

The Court: What was the other question?

Mr. Petrie: I am going to ask Capt. Sledge how far it is from the guard house to where the wire was stored at that time.

The Court: Go ahead.

Q. (By Mr. Petrie): How far is that?

A. The wire was stowed in back of Pier 50-C, in the rear of the southeast corner of the pier. You mean the distance from the guard shack to the wire?

Q. The distance from the guard shack. Is it also about 1,700 feet, or is it something else?

A. It would be a bit farther than that, sir; I would say approximately 1,850 feet, perhaps.

Q. How far is it from where the defendant's station wagon was to where the wire was stored?

A. Approximately 150 feet.

Q. Was the wire stored in a place that was higher than the [156] place where the car was parked? A. Yes.

Mr. Roos: Object to this, your Honor. This is improper cross-examination.

The Court: It isn't cross-examination; this is redirect.

(Testimony of Philip D. Sledge.)

Mr. Roos: I mean improper redirect examination.

The Court: I will overrule the objection.

Q. (By Mr. Petrie): Was the car parked in the depressed area? A. It was, yes.

Q. How depressed is that area, Captain? Can you describe it for us?

A. Well, we call it a depressed area because the area itself is lower than the floor of the shed structure.

Q. How much lower?

A. Approximately—I would say it varies; I would say approximately five feet.

Q. Now, from what portions of the pier can you drive a car into the depressed area or can you drive out of the depressed area with a car?

A. You can drive from any of the main gates of the piers. Each pier has a main gate located on the east and the west ends. You can drive an automobile out of any of those gates.

Q. Let me ask the question in this way: How far is it [157] from where the wire was stored to the beginning of the depressed area as to the nearest point of the depressed area?

A. May I point that out on your chart?

Q. Yes, will you, please?

A. This is the east end of Shed C. The wire was stowed approximately here on the southeast corner of the shed. The parked car, when I observed it, was here. I estimate the distance between the two to be approximately 150 feet.

(Testimony of Philip D. Sledge.)

Q. Yes, and I am now asking you how far over does the depressed area extend? What is the closest point in the depressed area to the point where the wire was stored?

A. The depressed area goes over to the southern corner of Shed C. There is a slight incline or ramp.

Q. Can you drive a car up that ramp?

A. Oh, yes.

Q. I show you Defendant's Exhibit I and call your attention to that sign again, "All vehicles must stop for inspection." Is that sign facing inward to Pier 50? A. Yes, sir.

Q. To what vehicles does that sign apply?

Mr. Roos: To which we object, your Honor, as calling for the opinion and conclusion of the witness. The sign will speak for itself.

Mr. Petrie: I will rephrase it, your Honor.

The Court: All right. [158]

Q. (By Mr. Petrie): In March of 1957, was it the practice for the guard in that guard house to stop cars of employees?

Mr. Roos: To which we also object, your Honor, on the same ground; it calls for an opinion and conclusion and it is incompetent, irrelevant and immaterial.

Mr. Petrie: He is the Security Officer.

The Court: I will overrule the objection.

Mr. Roos: He can't testify as to what some guard's practice might have been. It is hearsay, also.

The Court: He is the supervisor in charge of it.

(Testimony of Philip D. Sledge.)

He knows what—at least he says he does. Over-ruled.

Q. (By Mr. Petrie): Do you have the question in mind, Captain?

A. The guards did not stop all vehicles. They have orders to stop all trucks leaving the terminal area and inspect them. Private automobiles, no.

Mr. Petrie: That is all I have.

Recross-Examination

By Mr. Roos:

Q. Mr. Sledge, your guards have instructions to make spot checks of the automobiles and vehicles driven by employees, do they not?

A. They do at the present time, yes, sir.

Q. And they did in March of 1957? [159]

A. No, sir, they did not.

Q. When did that rule go into effect?

A. The rule originally went into effect in 1953, sir. It was discontinued in the summer of 1954 and again became effective in August of 1957.

Q. And was that put into effect and taken out of effect by any written directives given to the guards? A. Yes, sir, it was.

Q. Do you have copies of those?

A. Yes, sir.

Q. Do you have them with you, sir?

A. No, sir, I do not.

Q. Didn't your guards have instructions from you in March of 1957, to stop any automobile, par-

(Testimony of Philip D. Sledge.)

ticularly in the late night hours, which might be leaving with a load of material in it?

A. Certainly, sir.

Q. They did——

A. A load of material, of course. We require passes for any materials taken off the terminal, if we are aware of it.

Q. And that was true in March of 1957?

A. Yes, sir.

Q. It is a fact, is it not, Mr. Sledge, that there is no possible way for a motor vehicle to drive off of Pier 50 from the so-called depressed area out to Mission Rock Street or China Basin Street without going past the guard house at the [160] gate which was shown there on that diagram and in these pictures?

A. No, it isn't impossible, sir. The physical layout of the terminal is such that both Sheds A and B have main gates that open directly onto the street area. Those are usually kept secured.

Q. And other than that, the area depicted there of those four sheds and the depressed area is surrounded by water on three sides?

A. That is correct.

Q. And on the land side there are these locked gates and a wire fence; is that correct?

A. That is correct, sir.

Q. Who has keys to these locked gates?

A. I have keys to all locks within the terminal area. Those are kept in a security office. My guards

(Testimony of Philip D. Sledge.)

at the main gate have keys to those street gates that you refer to.

Q. Those are the only persons who have keys to those gates? A. That's correct.

Q. And was correct in March of 1957?

A. Yes, sir.

Q. On what date did the President Taylor sail from San Francisco in March, early—

A. The President Taylor shifted from our terminal over to the Oakland Army Terminal, I believe the date was March 8th.

Q. And if went over to the Oakland Army Terminal? [161] A. Yes, sir.

Q. On March 8th; and how long did she remain there?

A. Approximately 24 hours. As I recall it, it sailed on March 9th.

Q. And you say the matter of this copper wire was first reported to you by another official in A.P.L. on March 8th?

A. That is correct, sir.

Q. And I presume you made an inspection aboard the vessel on March 9th over at the Oakland Army Base to run this thing down?

A. No, sir, I did not.

Q. You did not? A. No, sir.

Mr. Roos: I have no further questions.

Mr. Petrie: Nothing more. Thank you.

The Court: That is all.

(Witness excused.)

Mr. Petrie: Mr. Schearn.

JOHN SCHEARN

called as a witness by the Government, being first duly sworn, testified as follows:

The Clerk: Will you please state your name to the Court and to the jury?

The Witness: My name is John Schearn. [162]

The Clerk: Please spell your last name.

The Witness: S-c-h-e-a-r-n.

Direct Examination

By Mr. Petrie:

Q. What is your occupation, Mr. Schearn?

A. Clerk—shipping clerk.

Q. Out of what office do you work?

A. Out of Local 134.

Q. Where is that located?

A. That is at Pier 11½ on the Embarcadero.

Q. And were you doing the same work in March of 1957? A. That's right.

Q. What are your duties generally? How are you assigned?

A. Well, I check cargo to a ship, sort cargo on the dock from a ship, and sometimes receive cargo.

Q. Are you assigned from that Local to a number of companies, depending on where the need is?

A. That's right; I go to several of them.

Q. Have you checked cargo from time to time for American President Lines? A. I have.

Mr. Petrie: May this clerk's hatch report, your Honor, be marked Government's Exhibit, I believe it is, 9 for identification?

(Testimony of John Schearn.)

The Clerk: Plaintiff's Exhibit 9 marked for identification. [163]

(Clerk's hatch report was marked Plaintiff's Exhibit 9 for identification.)

Q. (By Mr. Petrie): I show you a yellow copy of a dock receipt among papers that are Defendant's Exhibit A for identification, Mr. Schearn, and I ask you if you recognize that paper.

A. Yes, I do.

Q. Does your signature appear at the bottom of it, sir? A. That's right.

Q. And there are some other notations together with your signature, are there not?

A. That's right.

Q. And there are some other notations, together with your signature, are there not?

A. That's right.

Q. Can you tell us how you came to sign that paper and make those notations? What were you doing at the time?

A. This time I was loading coils of copper wire and I was loading in No. 4 hatch.

Q. Aboard what ship, do you recall?

A. The President Taylor.

Q. On what date did that loading take place?

A. That was in March; about a certain date—I don't know; about March——

Q. Don't guess, if you can't tell from that document what day it was. Do you recall where the coils were located on [164] the pier?

(Testimony of John Schearn.)

A. They were out in the back of the pier, outside Pier 50-C. They were on the front end.

Q. Address yourself to this diagram, Mr. Schearn. That is Pier 50 in the bottom left corner. Can you use the pointer and tell us where the coils were located? Would you say that they were at the end of Shed B?

A. I am trying to find "C"—50. About out here in—I am trying to figure where the parking area is.

Q. Do you find Shed C on the diagram?

A. Here is Shed C.

Q. Now, where were the coils located with reference to Shed C? A. At the outside.

Q. You are pointing to the corner of said Shed C. Was that the approximate location of the coils?

A. Outside.

Q. At the end of said Shed C?

A. The open area.

Q. At the end of the pier? A. Yes.

Q. How were the coils stored?

A. They were on pallet boards. They were lined up one high and they had these coils on the pallets.

Q. Can you tell us how many coils there were to a pallet? [165]

A. No; it is pretty hard to get the exact amount because, on a pallet, they don't put the same amount to a load. You get like a lot of coils there, it is hard to count them. All you can do is kind of take an estimate. You count about how many you figure on

(Testimony of John Schearn.)

a board; then you count the number of boards and you figure how much your tag calls for.

Q. By "tag," what do you mean?

A. 186. This tag calls for 186.

Q. What tag are you talking about?

A. This pile tag. This pile tag was right in front of the coils and I pulled that off the pile.

Q. Are you referring to the yellow copy of the dock receipt?

A. Dock receipt, yes. And then I take that off the pile and I see, well, this calls for so many, 186. And then I count them as near as I can because you can't get an accurate count on a pallet board, so you get approximate amounts so you make sure that you got them all in that one section, in the small place on the dock. Then you tell the lift driver to take them and he picks them up on the lift and takes them to the hatch.

Q. At the time that you count for loading, do you have before you the dock receipt showing the number of coils received at the pier?

A. That's right.

Q. By American President Lines? [166]

A. That's right.

Q. I show you next Plaintiff's Exhibit 9 for identification and ask you if you can identify that?

A. That is the hatch list, to keep a record of the time the gang I was with, from the time they start until the time they finish.

Q. Is that signed by you?

A. Yes, signed down here on the bottom.

(Testimony of John Schearn.)

Q. Does that hatch report cover the coils of copper wire?

A. Yes, it says from 10:45 to 12:00 midnight, loaded 186 coils of copper scrap, 22,000 pounds, 11 tons.

Q. Where did you get the figure "22,000 pounds"?

A. That is right on the tag, "186 coils, 22,000 pounds."

Q. Does that hatch report also cover other items that were loaded at about the same time?

A. Yes, it shows everything. After that, I loaded other cargo on.

Q. Don't tell us what the other items were, but does it also include other items?

A. It includes everything I loaded that night.

Q. Where did you get the figure "186" that you put on the hatch report, Mr. Schearn?

A. I got the 186 from this pile tag, from this dock receipt here.

Q. When those coils were loaded aboard the President Taylor, [167] were you present?

A. I was.

Q. Did you make your count at that time or at some earlier time?

A. I make it just before—before they take it to the ship, I got to get a count.

Q. I show you next Plaintiff's Exhibit 6 for identification, which is a green copy of a dock receipt, and I call your attention to some figures and letters in blue pencil at the bottom of that. Do

(Testimony of John Schearn.)

you recognize those notations? Are they in your handwriting, Mr. Schearn?

A. Those are not. No, those are not in my handwriting. Those are copied off this yellow copy here.

Q. Were you present when they were copied off the yellow copy?

A. This here, no; I don't know anything about this one.

Q. Did you at any time, in connection with this count of the coils loaded aboard the President Taylor, count each individual coil?

A. No, that's impossible. The only thing you can do——

Q. When were you first contacted by any agent of the Federal Bureau of Investigation in this matter, Mr. Schearn? A. This morning.

Q. By which agent?

A. I think a Mr. Burroughs. [168]

Q. When were you first contacted by anyone from American President Lines in connection with this matter? A. This morning.

Q. You talked with me this morning about it as well, did you not? A. That's right.

Q. In my office? A. That's right.

Q. That was the first time that we discussed it?

A. That's right.

Mr. Petrie: That is all.

(Testimony of John Schearn.)

Cross-Examination

By Mr. Roos:

Q. Mr. Schearn, you have been a ship clerk, is it?

A. That's right.

Q. For a good number of years, have you not?

A. That's right.

Q. About how long?

A. About 15 years—from 1943 until the present time.

Q. And what are the duties of a ship clerk?

A. A ship clerk receives cargo. A ship clerk delivers cargo. In other words, he receives it from teamsters or from freight cars, and he delivers cargo that is discharged from a ship, and he loads—he checks cargo to a ship.

Q. And do you know Mr. Delehanty? Is he a ship's clerk? [169]

A. I don't know him personally, but——

Q. Do you know of him?

A. I don't know him personally; I don't.

Q. In the general operation of this business when the truck delivers a load of cargo to the dock, one ship's clerk checks it from the delivery truck onto the dock; is that right?

A. That's right.

Q. And counts it?

A. That's right.

Q. And then a second ship's clerk, or maybe the same one, but if a day or so elapses, another ship's clerk will then check it from the dock into the hold of the ship; is that right?

A. Well, the cargo is received, that's right, by

(Testimony of John Schearn.)

—and it is put on the dock, and sometimes they load it direct or put it on pallet boards, what they call palletizing. They have a palletizing gang and they palletize it and put it on boards, and then it can be loaded on the ship the next day or any time after that.

Q. Do you have any independent recollection of loading this wire aboard the President Taylor?

A. I remember that.

Q. You have loaded a lot of ships before and after that time, haven't you? A. I have.

Q. Do you specifically remember this particular job? [170] A. I do.

Q. Is there anything about this that made it particularly stand out in your mind?

A. Well, one reason is is it's—I wouldn't load much—wire would be kind of a—you wouldn't load it many times; maybe you wouldn't load it again this year, and then sometimes I might load it—as far as I recollect, that is the only time I remember, and I remember this—like I say, I happen to remember this because it was out on the bulkhead and something, you know, left an impression on my mind.

Q. This particular wire, did part of your gang put it on pallets?

A. No, it was already palleted.

Q. It was already on pallets. Whose job would that be to put it on pallets?

A. The palletizing gang. That was done previously.

Q. The palletizing gang—who does that, long-

(Testimony of John Schearn.)

shoremen, checkers—— A. Longshoremen.

Q. And part of your job as a ship's clerk in checking it aboard the ship would be to report any shortage that he might discover, wouldn't it?

A. If he noticed any shortage, yes; that's right.

Q. That's part of your job?

A. Yes, if you notice any. [171]

Q. Now, I understand that when this material is put aboard pallets, one large coil—I withdraw that. When it is put aboard pallets, a small coil—a coil that is small in diameter like this one, you see?

A. Yes.

Q. That could get hidden inside of a coil that is large in diameter, couldn't it?

A. It could, yes.

Q. On a pallet? A. That's right.

Q. And that is the reason you say it is awful hard to get an accurate count when stuff is set on pallets?

A. Yes, it's hard to get an accurate count.

Q. For the reason that I have mentioned?

A. That's right.

Mr. Roos: If I may, your Honor, I am taking out this one document with this witness' signature from the mass of papers that is Defendant's A for identification.

Q. This yellow dock receipt which Mr. Petrie showed you, that bears your signature, John Schearn? A. That's right.

Q. And "March 8, '57," is that in your handwriting? A. That's right.

(Testimony of John Schearn.)

Q. And this "186," is that in your handwriting?

A. That's right. [172]

Q. And how about these other—

A. That's my handwriting.

Q. Could you explain to us what these other numbers are?

A. Well, "Lot 4094" is—well, every commodity you load on a ship, you give it a lot number, and they put that on a plan or stowage list so that, when the cargo gets on the other side, they can refer to this lot on a plan. It would be Lot so-and-so, and Hatch No. 4, 186 coils. And this is stowed "4, upper 'tween deck, starboard wing"—that is where it was stowed in the ship.

Mr. Roos: May I offer this in evidence as defendant's exhibit next in order?

Mr. Petrie: No objection.

The Clerk: Defendant's Exhibit K introduced and filed into evidence.

(Yellow dock receipt was received in evidence as Defendant's Exhibit K.)

Q. (By Mr. Roos): And when you put your signature on 186 coils to the yellow dock receipt and when you signed as ship clerk this clerk's hatch report that has been marked Plaintiff's No. 9 and said that there was 186 coils, you thought there was 186 coils, and you tried to do the best job you could, didn't you? A. That's right.

Q. And if there had been any shortage that you

(Testimony of John Schearn.)

noticed, [173] you would have told someone about it, wouldn't you?

A. Yes; if you actually know there is a shortage, you are supposed to report it.

Mr. Roos: Thank you very much, sir.

Incidentally, your Honor, before I forget it, would you instruct the witness, if he is served with a subpoena by my process server this afternoon, he needn't appear?

The Court: You don't have to come back.

Mr. Roos: Even if you get a subpoena, you don't have to come back.

Q. Incidentally, Mr. Schearn, you never talked to me or saw me until right here in court this morning? A. That's right.

Q. And you have never been contacted by anybody representing Mr. Teague, the defendant in this case? A. No, I haven't.

Mr. Roos: Thank you.

Redirect Examination

By Mr. Petrie:

Q. Mr. Schearn, can you recall, other than the occasion on which you loaded these coils of copper wire that you have testified about, can you recall that you loaded at any other time in 1957 coils of copper wire?

A. I am not sure, but I can't recollect any. I am not positive. [174]

Mr. Petrie: The Government offers its Exhibit

9 in evidence, your Honor. That is the clerk's hatch report.

Mr. Roos: No objection.

Mr. Petrie: I will dismantle it from the rest of the papers.

(Whereupon Plaintiff's Exhibit 9 for identification was received in evidence.)

Mr. Petrie: Thank you, Mr. Schearn.

Mr. Roos: Thank you, Mr. Schearn.

(Witness excused.)

Mr. Petrie: Mr. Barthol, please.

ROBERT G. BARTHOL

recalled as a witness by the plaintiff, being previously sworn, resumed the stand and testified further as follows:

The Clerk: You have been sworn, Mr. Barthol.

The Witness: Yes, sir.

The Clerk: Please resume the stand.

Direct Examination

By Mr. Petrie:

Q. You told us, Mr. Barthol, that you participated in the investigation of this case, did you not?

A. I did.

Q. Did there come a time during that investigation when you interviewed the defendant, Mr. Teague? [175]

A. Yes, sir.

Q. When was that?

(Testimony of Robert G. Barthol.)

A. The first time I interviewed him was on March 11, 1957.

Q. Where?

A. In the office of Inspector Middleton at the Richmond Police Department.

Q. Was Inspector Middleton present during the interview? A. Yes, he was.

Q. Was anyone else present?

A. Yes, Special Agent Cocker of the F.B.I

Q. What is that name?

A. Cocker—C-o-c-k-e-r.

Q. Anyone else present? A. No, sir.

Q. What time of the day?

A. I believe it was in the morning; I would say about 9:30 or thereabouts.

Q. Tell us as best you can recall what you said and what Mr. Teague said on that occasion.

Mr. Roos: May I interject, your Honor please? I would like to ask the witness one question more or less on voir dire before he is permitted to answer this question.

The Court: Go ahead.

Q. (By Mr. Roos): In this conversation with Mr. Teague and in all subsequent conversations that you may have had with [176] Mr. Teague, Mr. Barthol, Mr. Teague at all times emphatically denied his guilt of this charge, did he not?

The Court: Counsel, that is not voir dire; that is cross-examination.

Mr. Roos: Your Honor, if the defendant denied

(Testimony of Robert G. Barthol.)

his guilt, there is nothing before the Court and it is hearsay. That testimony should not go in.

The Court: Strike out the question and answer. It is not proper. Voir dire is a question of foundation.

Mr. Roos: I submit, your Honor, it is proper. The defendant is going to testify. The conversation is hearsay unless there is an admission of guilt.

The Court: You can't make him your witness in advance. If you want to, you can, but absent that, he is a witness on behalf of the Government.

Mr. Roos: Yes, but the question is objectionable unless there is going to be an admission of guilt.

The Court: I will ask the jury to disregard the statement of counsel. He can cross-examine the witness after he is examined on direct.

Mr. Roos: Then I am going to object to the question, if your Honor please, that was asked of Mr. Barthol concerning conversations on the ground that it calls for hearsay. Unless there is an admission of guilt, it is not admissible in any manner whatsoever. [177]

The Court: Any statement made by the witness—we are not talking about confessions—any statement made by the defendant to the witness is admissible in evidence.

Mr. Roos: That is not the law, your Honor.

The Court: I will overrule the objection.

Q. (By Mr. Petrie): What was the conversation on that occasion, Mr. Barthol?

A. The conversation—I asked the defendant

(Testimony of Robert G. Barthol.)

how he came by the wire that Mr. Middleton had told me had been located——

Q. Don't tell us what Mr. Middleton told you.

A. I asked him about the wire.

Q. What wire? Did you describe the wire?

A. Yes.

Q. Any more than by a reference to it as wire?

A. Yes, the wire which had been in his station wagon when Mr. Daniels had been talked to by Mr. Middleton. I asked him to tell me what the situation was on the obtaining of the wire, and he told me as follows: "On the 6th of March he went to work at Pier 50 in San Francisco at 8:00 in the morning and he worked until approximately 10:00 o'clock that night. He had parked his new 1957 Chevrolet station wagon in the parking area inside the terminal there. He got off work at 9:50—ten minutes to 10:00—that night and got in his car and drove out of the terminal. He went past the guard at the gate but the guard did not check his car; he merely waved him by. He then [178] proceeded across the Embarcadero to Third Street. He turned right or north on Third Street."

Q. Will you step over to the map and, with the pointer, indicate the route that the defendant told you that he took? Once you have oriented yourself, Mr. Barthol, if you can turn around and use the pointer with your left hand so that you don't obscure the diagram, it will be helpful.

A. Yes. Now, he did not mention this street and I am not familiar with the streets——

(Testimony of Robert G. Barthol.)

A. Just tell us what the defendant told you and locate the positions on the diagram.

A. He came out past the guard house and the guard, as I say, did not check him past but waved him by. And he said he went straight across the Embarcadero to Third Street. He turned right on Third and crossed the Third Street bridge. He then took a right turn on Berry Street and proceeded down the Embarcadero. At this point as he entered the curve of the Embarcadero, he was in the right-hand or curb lane.

Q. You are telling us what the defendant told you on the occasion?

A. Yes, this is what he told me.

Q. Yes.

A. He was in the curb lane and started to make a left-hand turn into the Embarcadero. When he was part way into that curve, he noticed a coil of wire laying on the street in the [179] curb lane ahead of him, and he stopped before he ran over it, and he got out and picked up the wire and put it in the back of the station wagon. At the same time he noticed lying ahead of him in the street, also in the curb lane, four other coils of wire; they were spaced between 10 and 15 feet apart going around the curve continuing the way he had been going.

Q. Will you take this white pencil, Mr. Barthol, and mark with a "T-2" the location of the first coil of wire according to what the defendant told you on that occasion, the first coil of wire?

A. Yes, That would be as he entered the turn

(Testimony of Robert G. Barthol.)

here; it won't take on this diagram; it has got Scotch Tape on it. It would be right at this point here.

Q. Right over the Scotch Tape?

A. Yes. The others were located—I won't mark them, just——

Q. No, don't mark the rest of them. The remaining four were farther along the Embarcadero?

A. Were farther along on the turn as he continued the turn into the Embarcadero. They were in the curb lane and ten to fifteen feet apart, and at that time he picked the other four up and put them in the station wagon and then continued on home to Richmond.

Q. Did the defendant tell you whether or not anyone was riding with him in the car? [180]

A. The defendant said he was alone in the car and he was alone all the way to Richmond. He said he parked the station wagon on the street at home and, when he went to work the next day, he took his step-son's, Mr. Daniels', '49 Chevrolet to work and he left the Chevrolet with Mr. Daniels with instructions to have a heater put in the car. He just purchased the car and he wanted a heater put in the car.

Q. Did you ask the defendant whether or not he had any discussion with Mr. Daniels about the wire?

A. Yes, sir, I did.

Q. What did he say?

A. He said that he told Mr. Daniels that the wire was in the car but definitely stated that he did

(Testimony of Robert G. Barthol.)

not give him any instructions about the wire or to do anything with the wire; he merely said it was in the car.

Q. Did the defendant tell you how much ahead of the car the first coil of wire was at the time he stopped?

A. He said merely "he stopped short of it prior to running over it, because it was right in the middle of his lane."

Q. Did you interview the defendant on another occasion after that? A. Yes, sir, I did.

Q. When was that?

A. That was on March 29, 1957.

Q. Where did that interview take place? [181]

A. At the office—I forget the name of it—an office on Pier 50 in San Francisco.

Q. Who else was present besides yourself and the defendant?

A. Mr. Burroughs of the F.B.I.—B-u-r-r-o-u-g-h-s—and myself.

Q. Anyone else? A. No, sir.

Q. What was said on that occasion?

A. I asked Mr. Teague to go over the story again, and he repeated the identical story up until the trip down Berry Street. May I use the map again?

Q. Yes.

A. At this time he repeated the story that he crossed the bridge and took a right down Berry Street. He said that about half way down Berry Street, midway between Third and the Embarca-

(Testimony of Robert G. Barthol.)

dero, somewheres in this area (indicating) he first saw a coil of wire lying on the street. But this time he said he was unable to stop and he ran over the coil of wire and stopped beyond the wire. At that time he went back and picked up the coil of wire and put it in the station wagon. He then stated that he noticed——

Q. Pardon me. Will you mark with a "T-3" the location of that first coil of wire?

A. Well, about there (indicating).

Q. What about the remaining four coils? [182]

A. The remaining coils of wire he told me he noticed off the curb here and extending back. There were four coils in this position—well, it would be somewheres in like that (indicating). He said that they were not on the street; they were not in the curb lane but off to the right; in other words, somewhat back of that curve and back of where his route would take him around that curve.

Q. Did you point out to the defendant that he located the wire differently on the second occasion than he did on the first?

A. Yes, sir, I did.

Q. And what did he say? Did he have any explanation?

A. No, he said he must have gotten confused.

Q. The first time, is that correct?

A. He didn't say; he said he must have gotten confused.

Q. Did you make notes of those two interviews?

A. Yes, sir, I did.

(Testimony of Robert G. Barthol.)

Q. Do you have those with you?

A. Yes, sir, I do.

Mr. Petrie: I have nothing further.

Cross-Examination

By Mr. Roos:

Q. At each and every interview that you had with the defendant, Mr. Barthol, the defendant denied stealing this wire, did he not?

A. Yes. [183]

Q. And at each and every interview you had with him, he told you he found the wire some time after 10:00 o'clock at night on Berry Street, somewhere between Third Street and the Embarcadero, right?

A. Yes, sir.

Q. And he told you the same thing when you searched his home in Richmond, did he not?

A. I didn't discuss that with him at that time.

Q. But you did search his home in Richmond?

A. Yes, sir.

Q. And he permitted you to search it without requiring you to get a search warrant or any other procedure?

A. He gave us a written permission to search, yes, sir.

Q. You were called into the case by Mr. Middleton of the Richmond Police Department, were you not, Mr. Barthol?

Mr. Petrie: Object to that as irrelevant, your Honor.

The Court: Sustained.

Mr. Roos: Pardon me, your Honor. May I review my notes just for a moment?

I have no further questions.

Mr. Petrie: Thank you.

Your Honor, may this witness be excused? He has duties apart from this case in Sacramento.

The Court: All right; you may be excused. [184]

Mr. Roos: Mr. Burroughs will be available?

Mr. Petrie: Yes.

I think I may have just one more witness, your Honor. Will you take a recess?

The Court: We will take the morning recess now, members of the jury.

(Recess.)

Mr. Petrie: Mr. Schneider.

ROBERT H. SCHNEIDER

called as a witness by the Government, being first duly sworn, testified as follows:

The Clerk: Please state your name to the Court and to the jury.

The Witness: Robert H. Schneider.

Direct Examination

By Mr. Petrie:

Q. What is your occupation, Mr. Schneider?

A. State Harbor Police Officer.

Q. Where do you work?

A. Well, along the Embarcadero; office in the Ferry Building.

(Testimony of Robert H. Schneider.)

Q. Did you work there in March of 1957?

A. Yes, sir.

Q. Were you on duty on March 6, 1957?

A. Yes, sir. [185]

Q. Have you refreshed your recollection that you were on duty on that date? A. Yes, sir.

Q. From some document? A. Yes.

Q. What paper have you used to refresh your recollection?

A. We have a work sheet we fill out every night.

Q. Do you have that sheet with you?

A. Yes, sir.

Q. What are your duties generally while you are on duty?

A. Well, traffic work and general police work along the Embarcadero all the way out Third Street.

Q. Do you walk or do you ride?

A. No, ride.

Q. Please turn your attention to this diagram on the board. Can you locate Berry Street on it in the upper right-hand corner? And can you generally orient yourself? Step over to it. A. Right.

Q. Do you find Berry Street? Will you point it out to us?

A. (The witness indicated.)

Q. When you make your rounds during the course of the evening, what route do you travel?

A. We come down on the Embarcadero turn down Berry Street and continue on down Third Street to Arthur Avenue, which is the end of our beat. [186]

(Testimony of Robert H. Schneider.)

Q. And then do you return?

A. Then we return.

Q. To what point?

A. Then we just return back down Berry to the Embarcadero and down the Embarcadero to the Aquatic Park, which is the other end.

Q. What are you looking for when you make those rounds?

A. General police work; it is hard to say—anything of the kind a police officer would be looking for.

Q. How many times during the course of an evening of duty do you make that trip and return?

A. Oh, from four to seven, depending on what else we have to do.

Q. Do you always make the first trip at a particular time?

A. The first time is always after we get off traffic, between 5:30 and a quarter after 6:00.

Q. What time do you go off duty?

A. At midnight.

Q. Those were your hours on March 6, 1957?

A. Yes.

Q. Would you say you made between four and seven trips—

A. Yes, sir.

Q. —on that night? A. Yes, sir.

Q. On that occasion did you notice anything lying in the [187] street, in Berry Street or along the Embarcadero? A. No, sir.

Q. Was someone riding with you?

(Testimony of Robert H. Schneider.)

A. Yes, sir.

Q. And can you tell us when during the evening you made those trips?

A. No, other than the first one, and we always make one before going in, which ends at about 11:30, but between that I can't say.

Q. Staggered, was it? A. Staggered.

Q. What is the name of the officer that was riding with you? A. Bryan Jackson.

Mr. Petrie: I have nothing further.

Cross-Examination

By Mr. Roos:

Q. Mr. Schneider, you say your route began at Aquatic Park on the north, and the southern end was where?

A. Arthur Avenue out near the slaughter houses.

Q. What is the approximate distance?

A. About seven and one-half miles.

Q. And the round trip, then, is about 15 miles?

A. Approximately; right.

Mr. Roos: I have no further questions. [188]

Mr. Petrie: That is all.

The Court: Thank you, Mr. Schneider.

(Witness excused.)

Mr. Petrie: The Government offers its Exhibits 2 and 3 in evidence. Exhibit 2 was the coils of wire and Exhibit 3 is the tag Mr. Calkins testified to.

The Court: You are offering 2 and 3 marked for identification in evidence?

Mr. Petrie: Yes, your Honor.

The Court: Any objection?

Mr. Roos: No, your Honor.

The Court: Admitted.

(Whereupon Plaintiff's Exhibits 2 and 3 for identification were received in evidence.)

Mr. Petrie: The Government rests.

The Court: Do you wish to go on now or make a motion?

Mr. Roos: I have a motion I would like to make to the Court.

The Court: Do you want me to excuse the jury?

Mr. Roos: Yes, I think it would be advisable.

The Court: I think maybe I will excuse the jury and let you come back a little bit earlier, come back at 1:30 instead of 2:00 o'clock. I have some legal matters I have to attend to with the lawyers in this case. Will the jury please [189] bear in mind the admonition I have given you and return at 1:30 p.m.?

(Thereupon the jury retired from the courtroom and the following proceedings were had in the absence of the jury:)

Mr. Roos: May it please the Court, at this time, on behalf of the defendant I move for a judgment of acquittal pursuant to Rule 29-A of the Federal Rules of Criminal Procedure.

The motion is made upon the ground that the evidence presented by the Government is insufficient for any reasonable person to make a finding that the defendant is guilty of the crime charged beyond

a reasonable doubt, which I understand is the basis to be considered by the Court under *United States vs. Cole* of this District, 90 Fed. Sup. 147, and other cases. And I say that looking at the evidence most favorably to the Government, no reasonable person could find beyond a reasonable doubt that the defendant was guilty of this crime.

The Government is bound to prove beyond a reasonable doubt under this Section of Title 18 and under the indictment that the property taken was part of an inter-state shipment; that the property was taken from a wharf; that it was taken with the intent permanently to deprive the true owner of possession, and that this act was committed by the defendant.

Leaving the defendant out of this for the minute, the evidence taken most favorable to the Government is insufficient [190] to establish beyond a reasonable doubt a *corpus delicti*, let along the guilt of the defendant. The evidence is insufficient to establish that this Plaintiff's Exhibit No. 2 was stolen from this shipment destined aboard the *President Taylor* from a wharf or from any other place, or that any part of the shipment consigned aboard the *President Taylor* was in fact ever stolen.

We have the evidence of 186 coils being delivered to the wharf and check in on the wharf by the dock checker, Mr. Delehanty, after it left the Federated Metals. We have the testimony this morning of Mr. Schearn—and I am grateful to the services of the F.B.I. for finding him, because they found him quicker than we could—testified that he counted

aboard and so certified on both the hatch records——

The Court: He didn't say that he counted——

Mr. Roos: And he said that if there was a shortage he would have mentioned it.

The Court: He said if something was obvious; but he directly testified that he didn't count it.

Mr. Roos: He said that the reason he couldn't make an accurate count, if you recall—he said the reason he couldn't make an accurate count was because the stuff was on top and the reason he couldn't make an accurate count was because a coil of a small diameter might have fallen down inside of a coil of wire of a larger diameter. So, therefore, it would appear that if any mistake would have been made, it would have [191] been a mistake in a short count and not a mistake in a high count. In other words, if there were in fact four coils of wire on a pallet and they were all of the same circumference, they would pile one on top of the other and he could easily count four, but if one of those coils was of small circumference and would have fallen into the center of the other three, then he would only count three whereas there were in fact four. Where a mistake in count was possible because of the palletizing of the cargo, it would have shown a short count and that would have turned up because he would have reported it; but no short count turned out even because of the difficulty of making an accurate count on the pallets.

Then, your Honor, carrying it one step further, we have a count made by Captain Johnson. And I was quite amazed at Captain Johnson's testimony,

but at any rate, he said he made a count in Yokohama and there was only 181 coils, and he denied that any other count had been made until he was shown the letter in his own handwriting addressed to Mr. Duncan Ward at American President Lines where he said, "I got to Kobe and ordered another count made and the third mate came up with 186 coils and he, in fact, found the five we missed in Yokohama behind some machinery consigned to Singapore." So we have 186 coils checked off the ship in Kobe and the boat note of the Japanese checkers in Kobe says 186 coils.

The Court: It also shows, does it not, [192] though, Mr. Roos, that apparently a lesser quantity in pounds arrived?

Mr. Roos: There is an uncertified weight of 22,000 pounds in San Francisco. There is the Japanese weight certificate and I don't know on what theory your Honor admitted it in evidence, but you admitted it.

The Court: On the same theory that I permitted it at the time that you wanted it. It is from the records of the American President Lines.

Mr. Roos: Anyway, it is in evidence, and it shows a shortage of 501 pounds—or, rather, not a shortage, but a differential in weight of 501—I have forgotten—or 499 pounds. I think it is 499. Do you have that weight certificate there?

The Court: Around 500.

Mr. Roos: 499 pounds over the weight in San Francisco. But even that doesn't jibe, because the only evidence on the weight is Plaintiff's Exhibit

No. 2 which so far was testified to by Mr. Barthol, who said he weighed this at the Richmond Police Station and it weighed 553 pounds.

Mr. Teige: 530.

Mr. Roos: My recollection is 553. I think the record will show that.

The Court: I am not going to decide this motion on 25 pounds of material.

Mr. Roos: So the weight is off somewhere. I stand [193] corrected. 531 pounds weighed in Richmond. So there is a difference there on just these five coils, which doesn't prove anything. It doesn't jibe with the difference in weight shown by the two weight certificates. So I say, your Honor—I am not saying if this were a civil case, I am not saying that there isn't something in the record whereby maybe somebody could find that it was stolen; but in passing on this motion which your Honor must determine in the first place, is there a corpus delicti proved beyond a reasonable doubt? And I don't think the evidence here is sufficient for any reasonable person——

The Court: Is there testimony that shows—evidence that shows that the defendant stole the wire?

Mr. Roos: I haven't got to that yet, your Honor. I say that there is no evidence upon which anyone could determine beyond a reasonable doubt that the theft of a portion of this shipment consigned aboard the President Taylor occurred by the defendant or any other person; that a corpus delicti has not been proven to the point where anyone can say beyond

a reasonable doubt, "Yes, a crime was committed; some of that shipment was taken."

As to the connection of the defendant with this crime, I say again that there is no evidence—no reasonable person could find beyond a reasonable doubt that the defendant stole this wire from the wharf, if in fact any wire was ever stolen from the wharf by any person. The evidence is purely [194] circumstantial and, as your Honor knows, circumstantial evidence must be consistent with the hypothesis of guilt and inconsistent with any reasonable hypothesis of innocence.

The defendant, according to the FBI, never made any admission of guilt. He always insisted on numerous occasions that he found the wire somewhere on Berry Street between Third Street and the Embarcadero, and the only inconsistency in his story that even the FBI was able to come up with was at one stage the location of the wire differed in some minor particular. But evidently the FBI never took Mr. Teague out to the area and had him actually pinpoint on the street where he found this wire, which would eliminate any inconsistency of estimating where something occurred on a dark night.

But there is no evidence of guilt in any statement he has stated. Certainly he had the opportunity to commit the crime, but so did several hundred other people—longshoremen, other members of the gang of which Mr. Teague was a member. Anybody could have committed it, if a crime was committed. The story is that he found it, and it is an entirely credi-

ble story. There is no admission of guilt whatsoever. How could any reasonable person hold beyond a reasonable doubt——

The Court: Isn't that a jury question, counsel?

Mr. Roos: No; it is a question of law for the purposes of this motion.

The Court: No; it is not a question of law. [195] I couldn't say that no reasonable person would accept as gospel truth the story told by the defendant as to how he found this wire with a tag on it and put it in his car——

Mr. Roos: Could any reasonable——

The Court: ——a tag on it, part of this shipment. Then he takes it to his home——

Mr. Roos: There was no concealment. The tag was still on it. There was no concealment. He left it in the car which he turned over to his son. He drove it right out the gate on that night.

The Court: Counsel, isn't that all a jury question we have in every case that involves circumstantial evidence?

Mr. Roos: For the purposes of this motion, your Honor, the——

The Court: If I were trying the case, yes, I can exercise the right to determine that I am convinced beyond a reasonable doubt; but that is not the question. When you demand a jury, you are entitled to a jury verdict. Both sides are entitled to a jury verdict once the defendant asks for a jury trial.

Mr. Roos: For the purpose of this motion, your Honor, the question of law for your Honor to pass on as stated by the cases is: Could any reasonable

person find beyond a reasonable doubt that the defendant is guilty of this crime?

The Court: Well, I would have to say in answer to [196] that question that there are at least twelve persons that could reasonably find on the evidence that the defendant is guilty. I wouldn't come to any other conclusion. How could I say that it is not reasonable on the evidence for a person to find the defendant guilty? There is the missing wire. It was found in his possession; the testimony that his car was parked there that night; that the wire was on the dock, and he has got it in his car. There is a tag on it. He takes it home. What is an innocent person doing picking up wire on the street, copper wire, and taking it home and then trying to sell it? All of those are inferences and conclusions that any reasonable person, taking all the circumstances together, might well find the defendant guilty. I am not saying what I would do if I were trying the case as a matter of judgment, but I certainly cannot say on the evidence here that a reasonable person hasn't got sufficient evidence if he wants to find that way.

Mr. Roos: I think in a civil case, yes, but not in a criminal case where a finding beyond a reasonable doubt is required.

The Court: All you are asking me to do is to do what is frequently asked by attorneys from a judge, is to take over the case and decide it myself whether I think he is guilty or not.

Mr. Roos: Well, that is exactly the purpose——

The Court: No; my function as a judge is only

to [197] determine whether there is sufficient evidence upon which a reasonable person could act in determining the guilt or innocence, not my determining whether he is guilty or innocent.

Mr. Roos: I think from the state of this record no reasonable person could find him guilty beyond a reasonable doubt, because no reasonable person could find in the first place that a crime was committed.

The Court: All I can say in answer to that is that if the jury should find the defendant guilty in this case, I wouldn't set aside the verdict. I might come to a different result myself, but I am not trying the defendant. And I might take a lot of other factors into account. I am not saying that I would. All I am telling you is that there is a jury of twelve people and there is certainly circumstantial evidence that would justify and support a verdict of guilty.

Mr. Roos: Is the circumstantial evidence inconsistent with any hypothesis of innocence?

The Court: I think so. I think there is enough evidence here, taken altogether, to indicate that this defendant took this wire off the dock; that all of the circumstances of what he did are consistent with stealing the wire and are produced here in evidence. I am not saying—don't misunderstand me—that that is my finding, but that those circumstances are sufficient to go to a jury.

Mr. Roos: Isn't it equally consistent that [198] he found the wire on the street and intended to sell

it rather than try to find the true owner, which may be illegal?

The Court: Pragmatically, yes, if you go on the hypothesis that a jury as well as a judge must accept as true a statement made by a witness.

Mr. Roos: Well, there is no evidence to the contrary.

The Court: Certainly there is evidence to the contrary. There is circumstantial evidence to the contrary, and there is also, if I may say so, the circumstance that this is a fantastic story that is told by the defendant.

Mr. Roos: What circumstantial evidence is there to the contrary?

The Court: It is completely unbelievable, in my opinion, but I don't know whether I would still find him guilty of the offense here.

Mr. Roos: What circumstantial evidence is there that he picked the property off the dock other than the opportunity?

The Court: I will argue the case with you, if you want me to.

Mr. Roos: Other than the opportunity.

The Court: But it is only carrying coals to Newcastle. What ordinarily decent person working at a pier where he sees boats being loaded would go up Berry Street and [199] stop for different pieces of heavy wire, each of them weighing 125 pounds apiece, stop and load them in his car, take them home, and then send his son-in-law out the next day to see how much he could get for that wire? Is

that a story that is believable on the part of a normal, law-abiding citizen?

Mr. Roos: It doesn't have to be——

The Court: I would say that I would be a moron if I had to follow your line of reasoning that I have to accept that statement.

Mr. Roos: My point is, your Honor, that there is no circumstantial evidence to show that this defendant took that wire off the wharf.

The Court: Well, there is circumstantial evidence there.

Mr. Roos: The only thing is that his car was there and he was working there.

The Court: All of the circumstances put together I think are sufficient to make out a circumstantial case. Whether or not it is strong enough to warrant a verdict of guilty is for the jury, whether they believe it sufficiently.

Mr. Roos: He had the opportunity to commit the crime along with a hundred other people.

The Court: And he had possession of the property.

Mr. Roos: Where is any evidence to show that he did in fact take it off the dock and not [200] find it?

The Court: Well, the fact that he has possession of the property under all of the circumstances is sufficient to warrant assumption that he took it off the dock.

Mr. Roos: That isn't the law, your Honor.

The Court: Well, I am not discussing the legal proposition with you. All I am saying is that it is

a matter of weight of evidence, Mr. Roos. It isn't the strongest case in the world. Nobody saw him take the stuff and put it in his car and take it home, and no one can read his mind as to what his intent was, but there is a great deal of evidence of a circumstantial nature which it is up to the jury to evaluate, in my opinion.

Mr. Roos: I will submit the matter.

The Court: I can't take the case away from the jury on this state of the record. Up until the time that certain of the evidence had come in, yes, it looked to me like there might be a case that would not go to the jury, but there is now evidence of a circumstantial nature that brings the defendant in direct contact with this thing. I think there is sufficient evidence to go to the jury, Mr. Roos.

Mr. Roos: Well, I will submit the motion, Judge. Thank you.

The Court: I will deny the motion for a judgment of acquittal.

(Discussion between Court and counsel as to further [201] time required for the trial of the case omitted from this transcript.)

(Thereupon a recess was taken until 1:30 o'clock p.m. this date.) [201-A]

Wednesday, September 17, 1958—1:30 o'Clock P.M.

Mr. Roos: May it please the Court, Mr. Petrie and I reached a stipulation concerning the newspaper American Metal Market that the witness Teller testified to yesterday. The March 5, 1957, ed-

tion gives the San Francisco price of No. 1 heavy copper at 23½ cents to 24 cents a pound; March 6th the San Francisco market does not appear in the paper, and March 7th edition, the San Francisco price for No. 1 heavy copper is the same as it was on the 5th, that is, 23½ to 24 cents a pound.

Mr. Petrie: So stipulated, your Honor.

Mr. Roos: Call Mr. Sheridan.

Mr. Petrie: As part of the last stipulation, your Honor, the prices shown are listed in the papers as dealer's buying prices.

JOHN J. SHERIDAN

called as a witness by the defendant, being first duly sworn, testified as follows:

The Clerk: Please state your name to the Court and to the jury.

The Witness: My name is John J. Sheridan.

Direct Examination

By Mr. Roos:

Q. Where do you live, Mr. Sheridan? [202]

A. 2910 Evan Avenue, Richmond, California.

Q. And your business or occupation?

A. I am a Richmond city councilman and vice president of the General Truck Drivers and Helpers Union 315, Contra Costa County.

Q. And how long have you lived in Richmond?

A. I have lived in Richmond since 1941.

Q. And before you held your present office as city councilman in Richmond did you hold any other office in the city of Richmond?

(Testimony of John J. Sheridan.)

A. Yes, I was mayor of Richmond for two years.

Q. What years was that?

A. '54-55 and '56-57.

Q. Do you know the defendant Teague?

A. I do.

Q. Edgar Harold Teague? A. Yes.

Q. And he lives in Richmond, does he?

A. He lived in Richmond. I think he lives in El Cerrito now.

Q. How long have you known Mr. Teague?

A. I have known Mr. Teague since 1951.

Q. Could you tell us just generally what the nature of your contacts have been with him and his family?

A. I have known him being a labor official and I have had [203] some acquaintance with him as a working man. Several years ago he contacted me and obtained summer employment for his son, and then I know the family generally in the area, some of the incidents that have occurred with the family, I know them.

Q. Do you know Mr. Teague's general reputation for honesty and integrity in that locality?

A. I do.

Q. And what is that reputation?

A. Good.

Mr. Petrie: As of when, your Honor?

Mr. Roos: As of right now.

The Witness: Good, sir.

Q. (By Mr. Roos): And have you ever heard anything against him, other than of course with the

(Testimony of John J. Sheridan.)

exception of this charge on which he is on trial here? A. No, sir.

Mr. Roos: Thank you, sir.

Cross-Examination

By Mr. Petrie:

Q. Mr. Sheridan, what was your position, sir? I didn't get that. Not your governmental position.

A. Vice president.

Q. You said you were vice president of what?

A. General Truck Drivers and Helpers Union Local 315.

Q. Is that a local which is located in Richmond? [204]

A. Yes, sir, in Contra Costa County.

Q. How long have you held that position?

A. Since 1948.

Q. When did Mr. Teague and his family leave El Cerrito, do you know—not El Cerrito, but Richmond? When did they move to El Cerrito?

A. Oh, it has been I believe within the last two years.

Mr. Petrie: I have nothing further.

The Court: That is all.

Mr. Roos: How far is El Cerrito from Richmond?

The Witness: It is adjacent right to Richmond, sir.

Mr. Roos: Thank you.

Agent Burroughs.

FRANKLIN S. BURROUGHS

called as a witness by the defendant, being first duly sworn, testified as follows:

The Clerk: Please state your name to the Court and to the jury.

The Witness: Franklin S. Burroughs.

Direct Examination

By Mr. Roos:

Q. Your occupation is Special Agent of the Federal Bureau of Investigation? A. Yes. [205]

Q. You have been active in the investigation of this case? A. Yes, I have.

Q. And did you last Friday accompany these five coils of copper wire in a truck to a public weighmaster here in San Francisco?

A. Yes, I did.

Q. And were they weighed at that time by that public weighmaster?

A. The truck was weighed with the coils in them.

Q. And then the truck was weighed with the coils not in them, correct? A. I don't know.

Q. You were present, weren't you?

A. I was not present when the truck was weighed without the coils.

Q. Where were you?

A. Well, the truck apparently was weighed without the coils before I was present.

Q. In any event, you went down and accompanied these coils to the public weighmaster from the U.S. Marshal's office and you rode back and ac-

(Testimony of Franklin S. Burroughs.)

accompanied them back to the U.S. Marshal's office; is that right? A. That is correct.

Q. And that was in accordance with instructions received from Mr. Petrie? [206]

A. That is correct.

Q. Pursuant to—well, you wouldn't know about that. And the public weighmaster gave you a certificate of weight and measurement, did he, for this, Plaintiff's Exhibit 2? A. Not to me.

Q. Who did he give it to?

A. He gave it to the truck driver.

Q. And do you have that certificate?

A. I have a copy of it.

Q. May we have the copy?

A. I haven't got it with me.

Q. Would you produce it for us?

A. Yes.

Mr. Roos: Unless Mr. Petrie is willing to stipulate.

Mr. Petrie: No, I am not. I am going to object to its introduction through this witness, your Honor. We can have the man who did the weighing here and made the computation, and I won't object to it.

The Court: You say you have the man?

Mr. Petrie: No, no, this weighing was done at the request of defense counsel, your Honor, and I just sent Mr. Burroughs along.

Q. (By Mr. Roos): No representative of the defendant was present, was there? [207]

A. Would you repeat that question, please?

(Testimony of Franklin S. Burroughs.)

Q. No representative of the defendant went with you on this journey to the weighmaster and back?

A. Just the truck driver.

Q. I wasn't there? A. No.

Q. And the truck driver was hired from Lyons Van & Storage? A. Yes.

Q. Did you get a copy of the weight certificate from the truck driver? A. Yes, I did.

Mr. Roos: May I see it, please?

(Document handed to counsel.)

Mr. Roos: May we have that marked for identification?

The Clerk: Defendant's Exhibit L marked for identification.

(Copy of weight certificate was marked Defendant's Exhibit L for identification.)

Q. (By Mr. Roos): You made no question or you didn't question the manner in which the weighing was carried on, did you? A. No.

Q. And you didn't protest that you hadn't seen the truck weighed? [208]

A. No; I merely went along with the instruction of the United States Attorney to stay with the evidence.

Q. Then you were with the evidence at all times?

A. Yes, I was.

Q. While it was being weighed on the truck?

A. Yes, that's correct.

Q. And this is the receipt from you? It is a duplicate original; I see it has a seal on it.

(Testimony of Franklin S. Burroughs.)

A. That is a copy.

Q. It also has the seal of the weighmaster, has it not? A. Yes.

Mr. Roos: We will offer that in evidence.

Mr. Petrie: Object to that as without foundation. We don't know how this weight was obtained. Mr. Burroughs said only he noticed the truck and the coils were weighed together; he doesn't know how the weight was arrived at; he didn't participate in the weighing. I think we are entitled to have the certificate introduced through the weighmaster.

The Court: I suppose "tare" means the——

Mr. Roos: Gross, tare and net.

The Court: The weight of the truck?

Mr. Roos: Yes.

The Court: What is all this fuss about? Was there a few pounds—this certificate, the weighmaster's certificate, shows 460 pounds and some place else it was 530 [209] pounds. Is there any particular significance to this?

Mr. Roos: Yes, your Honor, there is. I wouldn't offer it if it weren't.

The Court: Are public weighmasters' certificates admissible in evidence?

Mr. Petrie: Not being——

Mr. Roos: I believe they are, your Honor, under the California Business and Professions Code.

The Court: I don't know. Maybe they are. Are they public records that may be introduced without authentication?

(Testimony of Franklin S. Burroughs.)

Mr. Roos: I wouldn't want to say to the Court positively.

The Court: That is the only question. If you are going to spend a long time about 30 or 40 pounds, whether it is 460 or 500 pounds, why, I wouldn't know. If I should admit this weighmaster's certificate, I will admit it.

Mr. Roos: I don't understand the dispute, your Honor, when Mr. Burroughs goes along with it, gets it weighed and brings it back, and then they won't stipulate to it.

The Court: I can understand it. There is no use saddling this man with it. All he did was go along. The United States Attorney said, "You stick with the evidence," and then he went along and they weighed something. He is not a competent witness to testify how much this weighed; he didn't weigh it. But if the weighmaster's certificate is a public record and it [210] is admissible in evidence, I will admit it. Have you got any authority to show that that is so? I have never had that question. If not, you would have to have the man who did the weighing to testify to it in court.

Mr. Roos: I hoped that it would be stipulated to, that the weighmaster weighed it and found that weight on that date. It is entitled to as much weight as any other weight, but if——

Mr. Petrie: Mr. Roos has known since yesterday at the outset of the case that there wasn't going to be any stipulation.

Mr. Roos: I didn't. I understood that you

(Testimony of Franklin S. Burroughs.)

wouldn't stipulate that this certificate was correct as against the other weight.

The Court: Gentlemen, is there a California statute that makes these public weighmaster certificates admissible as such in evidence? Is there? I don't know.

Mr. Roos: I wouldn't—your Honor, when I make a statement to the Court that the law is such-and-such I like to be sure. I believe there is, but I am not certain.

The Court: Is there anything else that you wanted of this witness?

Mr. Roos: No, your Honor.

The Court: Suppose you withdraw him and let me know. If this is admissible as such, I will admit it. While [211] you are doing something else your associate can look up the California law provisions and let us know in five minutes. That is very simple.

Mr. Roos: That is all.

Mr. Petrie: Thank you, sir.

Mr. Roos: Call Mr. Hellman.

I did have just one more question of Mr. Burroughs on another subject, if I might ask him.

The Court: All right; come back.

Q. (By Mr. Roos): Mr. Burroughs, you were present when your colleague, Agent Barthol, testified? A. Yes, I was.

Q. And you heard him testify concerning Mr. Teague's statement about where he found the wire?

A. Yes.

Q. Now, neither you nor Mr. Barthol ever took

(Testimony of Franklin S. Burroughs.)

Mr. Teague physically to the block on Berry Street between Third and Embarcadero and had him actually point out on the ground where he found the wire did you? A. No.

Mr. Roos: Thank you.

Cross-Examination

By Mr. Petrie:

Q. Did you get during any interview that you and Mr. Barthol had with Mr. Teague a diagram from Mr. Teague? [212] A. Yes.

Q. Do you have that? A. Yes, I do.

Q. With you now? A. Yes.

Q. Was that taken during the second interview? Was that the one in which you were present?

A. That is correct, sir.

Mr. Petrie: May this be marked Government's Exhibit 10 for identification.

The Clerk: Plaintiff's Exhibit 10 for identification.

(The diagram was marked Plaintiff's Exhibit No. 10 for identification.)

Mr. Petrie: Defense counsel has been furnished a copy.

Mr. Roos: I object to this; it is improper cross-examination.

Mr. Petrie: He did ask him whether or not the man was taken out to the area.

The Court: You opened up the subject; it is a proper line of inquiry.

(Testimony of Franklin S. Burroughs.)

Mr. Roos: I have no objection if he wants to put the document in evidence.

Mr. Petrie: We will offer it in evidence, [213] then.

The Clerk: Plaintiff's Exhibit 10 admitted in evidence.

(Whereupon Plaintiff's Exhibit 10 for identification was received in evidence.)

Q. (By Mr. Petrie): What is Plaintiff's Exhibit 10, Mr. Burroughs?

A. This is a diagram of Berry Street between Embarcadero and Third Street and it has on it an "X" made by Mr. Teague as to where the first coil of wire was found and four more marks as to where the other four coils were found.

Q. Did Mr. Teague or did you or Mr. Barthol draw the rest of the diagram?

A. Barthol drew the rest of the diagram; Mr. Teague put the "X" on it.

Q. Was the rest of the diagram complete before the "X" was placed upon it by Mr. Teague?

A. Yes.

Mr. Petrie: That is all I have, your Honor.

Q. (By Mr. Roos): The diagram does not purport to be to scale, does it, Mr. Burroughs?

A. No.

Q. Just a rough, free-hand sketch by you or Mr. Barthol?

A. It is a sketch.

Mr. Roos: That is all.

The Court: That's all. [214]

Mr. Petrie: Thank you.

FRANCIS W. HELLMAN

called as a witness by the defendant, being first duly sworn, testified as follows:

The Clerk: Please state your name to the Court and the jury.

The Witness: My name is Francis W. Hellman.

Direct Examination

By Mr. Roos:

Q. Where do you live, Mr. Hellman?

A. 1256 Capuchino Avenue, Burlingame.

Q. And your business or occupation is what?

A. I work for American President Lines in the finance department, controller's division, dock paymaster's office, and my title is junior auditor.

Q. And in response to a subpoena that was served upon you have you produced here yesterday an envelope containing certain payroll records of American President Lines that have been marked Defendant's Exhibit B for identification?

A. Yes, I did.

Q. I wonder if you would open that up and, referring to your records, would you tell me first the total amount of wages paid by American President Lines to Edgar Teague in whatever the first year you have there is? Is it 1955?

A. 1955 is correct. The total is not listed here for 1955. [215]

Q. Is it totaled up to any particular part of 1955?

A. Yes, it is up to the point, \$3,760.09.

(Testimony of Francis W. Hellman.)

Q. And through what date is that?

A. June 24, 1955.

Q. I won't ask you to add the rest of those figures. Now, what was the total amount paid Mr. Teague in 1956? Incidentally, are those figures gross pay or take-home pay?

A. These are gross.

Q. 1956.

A. O.K. One second. For 1956 the total earnings shown are \$8,541.03.

Q. And 1957?

A. For the year 1957 the earnings shown are \$10,215.19.

Q. An 1958 up to the last date you have there?

Mr. Petrie: I think that is irrelevant, your Honor. I think 1958 does not concern us.

The Court: Yes, it would be beyond the period.

Mr. Roos: Thank you very much, Mr. Hellman. I have no questions.

Cross-Examination

By Mr. Petrie:

Q. Mr. Hellman, can you tell what part of the ten thousand odd dollars paid Mr. Teague in 1957 was for overtime work and what part was for regular work?

A. Well, to find that out I would have to add the total [216] overtime on these cards.

Q. Is it a computation you can make readily? How long would that take you?

A. I would need an adding machine.

(Testimony of Francis W. Hellman.)

Mr. Petrie: Perhaps the witness can be excused, your Honor, and return with that computation, so we don't waste time.

The Court: Is it important?

Mr. Petrie: I won't press it.

The Court: Was there much overtime?

The Witness: This type of worker earns considerable overtime.

The Court: In other words, what is the daily rate, do you know?

I am just asking these questions to ascertain the materiality of it.

The Witness: The hourly rate for this gentleman is \$3.31 per hour straight time; \$4.96½ per hour overtime.

The Court: So you would have about \$25.00 a day for straight time pay ordinarily five days a week?

The Witness: Well, straight time pay for eight hours is \$26.48, and for overtime for eight hours is \$39.72. These are the current rates of pay for 1958.

The Court: At least on the \$10,000 basis it would amount to at least two or three thousand dollars overtime? [217]

The Witness: I would estimate 20% of the \$10,000 was overtime.

The Court: 20%; that would be about two thousand?

The Witness: Yes.

The Court: Well, is that close enough?

Mr. Petrie: Certainly, your Honor.

The Court: Anything else from the witness?

Mr. Roos: No, your Honor.

The Court: That is all. May he take these records back with him?

Mr. Roos: As far as I am concerned, your Honor.

The Witness: Take them back to my office?

The Court: Yes.

The Witness: O.K. Thank you.

ERNEST C. REID

called as a witness by the defendant, being first duly sworn, testified as follows:

The Clerk: Please state your name to the Court and to the jury.

The Witness: Ernest C. Reid.

Direct Examination

By Mr. Roos:

Q. Where do you live, Mr. Reid?

A. 146 Los Banos, Daly City, California.

Q. And what is your business or occupation? [218]

A. Hull painter for American President Lines.

The Court: A what?

The Witness: Hull painter.

Q. (By Mr. Roos): And how long have you been on that particular job?

A. Let's see; it will be seven years in November this year.

(Testimony of Ernest C. Reid.)

Q. And are you a member of the same crew that Edgar Teague is a member of down there?

A. I am.

Q. Pardon me? A. I am.

Q. And how long have you known Mr. Teague?

A. Say around about nine or ten years.

Q. How many members are there in this crew of hull painters with the American President Lines?

A. There are seven steady painters for American President Lines in our department.

Q. Seven members in your department. Are there any other members on the——

A. Yes, there is sixteen other fellows working in the maintenance department.

Q. Are they also regular employees of American President Lines? A. Yes, sir.

Q. Now, you are familiar, are you, with the area of the [219] American President Lines pier in the parking area? A. Yes, sir.

Q. I show you this picture Defendant's Exhibit G and ask you could you identify that for us.

A. Yes. This is the parking lot and the valley down there in Mission Rock.

Q. Portion of the parking lot? A. Yes.

Mr. Roos: We will offer that in evidence, your Honor. It is only marked for identification.

Mr. Petrie: Object to it. That is the one Mr. Sledge said was not an accurate representation. It certainly has not been established through this witness.

(Testimony of Ernest C. Reid.)

Mr. Roos: Captain Sledge couldn't identify it, but this witness could, your Honor.

The Court: He says it is a portion of the parking lot.

Mr. Roos: Yes.

The Court: Is that sufficient identification?

Mr. Roos: I think so.

The Court: What are you going to argue from the picture?

Mr. Roos: I just want to show the general area, your Honor.

The Court: Well, it is only part of the general [220] area.

The Witness: All but three cars——

The Court: Did you take the picture?

A. No, I did not. No, I park over there every day, though.

Q. How much of the parking area is shown in that picture, of the total area? Can you tell from looking at it?

A. Well, where they specify right now is the parking area, I believe it is all in there now.

Q. You say this shows completely the entire parking area?

A. The entire parking area for employees of American President Lines working inside the terminal.

Q. The parking area for the employees?

A. Yes, sir.

Mr. Petrie: May I examine the witness on this, your Honor, before making an objection?

(Testimony of Ernest C. Reid.)

The Court: Yes.

Mr. Petrie: Mr. Reid——

A. Yes, sir.

Q. Would you have a look at the diagram that we have here on the board? A. Yes.

Q. You will notice it is a diagram of Pier 50 in the bottom left-hand corner, and at the bottom of the pier is a building labeled “Utility Building.”

A. Yes. [221]

Q. Have you oriented yourself on that?

A. Yes.

Q. Does this picture, Defendant’s Exhibit G for identification, show any part of the area immediately in front of the utility building?

A. We are not allowed to park there.

Q. You are not now, but you were——

A. Never was.

Q. Well, will you answer my question: Does the picture show any portion of that area?

A. It doesn’t show in front of the utility building, no, sir.

Mr. Petrie: I will object to it, your Honor, as being incomplete.

Mr. Roos: It is not supposed to. It is supposed to show the parking area. You can’t show the whole area in one picture, your Honor. Why don’t you ask him to show us there on the diagram the area of the picture?

The Court: What is the good of the picture, then, if it doesn’t show it? You have got it on the board.

(Testimony of Ernest C. Reid.)

Q. (By Mr. Roos): You never saw the picture before just now, did you?

A. No, I did not.

Q. Could you show us, referring to the diagram, the area shown on the picture? Do you think you can do that? [222]

A. I think right now the parking area starts from here up to here.

Q. Show us the area covered by the picture.

A. I think the——

Q. Can you identify the shed over here?

A. I believe this is A up here, C over here, and D over here. Pier A, B, C, D. Pier C is right in here.

Q. What shed is the one on the right?

A. This is Pier C—50-C.

Q. Would you write on the picture, then, put a little arrow leading to it, what that shed is there?

(The witness writes on diagram.)

Q. How about this building down here in the corner?

(The witness writes on diagram.)

A. You want the other one, too?

Q. And the other one too, yes.

(The witness writes on diagram.)

Q. Now, then, the one in the center, what is that pier?

A. That is B.

(Testimony of Ernest C. Reid.)

Q. Pier 50-B? Would you say that was Pier 50-B before you marked the picture?

A. Oh, wait a minute; that is A, yes—B ahead of D.

Q. In other words, am I correct in saying that this picture shows the parking area generally in here; that is taken facing down this way? [223]

A. Yes, sir.

Mr. Roos: We will offer it in evidence, your Honor.

Mr. Petrie: The picture we submit is incomplete. The picture was apparently taken from the general area where the coils were stored according to the testimony and where the defendant's car was parked. The picture itself doesn't include that area.

Mr. Roos: Have you got a picture that does?

Mr. Petrie: I don't.

Mr. Roos: The picture is only supposed to be a representation of the area it is supposed to show. I don't know how you could put the entire area in one picture, your Honor, so it goes in all four directions.

The Court: I am not urging or suggesting that you leave anything out, counsel, but what purpose does this serve? If it doesn't show all of the area in this part of it—there has been no testimony directed towards anything happening in this particular area. You might as well take a picture of Market Street and put it in.

Mr. Roos: It isn't important enough. If Mr. Petrie doesn't want it in, I will withdraw the offer.

(Testimony of Ernest C. Reid.)

It isn't important enough to have a hassle about it.

The Court: It isn't what Mr. Petrie wants. I am just suggesting so the jury will not be confused that there is [224] no purpose in this picture unless you have a picture of the entire area. If you want it to go in, I will let the picture go in for the limited purpose of showing the area but does not include the entire area.

Mr. Roos: That is the only purpose it was offered for, Judge.

The Court: All right; mark it in evidence. Then you can't complain about it.

The Clerk: Defendant's Exhibit G admitted into evidence as limited by the Court.

(Photograph of American President Lines parking lot marked Defendant's Exhibit G for identification admitted into evidence.)

Q. (By Mr. Roos): Are you still employed by APL? A. I am.

Q. Mr. Teague also? A. He is.

Q. Both of you doing the same job that you did during March of 1957? A. Yes, sir.

Q. Getting back to the evening of March 6, 1957, did you see Mr. Teague that day and evening?

A. Yes, we work together every day unless somebody is sick.

Q. And did you see Mr. Teague's car that evening? A. I did. [225]

Q. Was there anything about the car that stands out in your mind?

(Testimony of Ernest C. Reid.)

A. Yes. He had a new car then.

Q. Was that the first time you saw it?

A. Yes.

Q. What time did you quit work that night?

A. It is pretty hard for me to tell you the exact time, we work so many nights; I guess it was around about quarter to ten or ten o'clock, or after ten.

Q. And what did you do immediately after you stopped work?

A. Well, we went and changed clothes, and Mr. Teague, I wanted to see his new car. I jumped in it and started the power, a 1957 Chevrolet, and looked the car over and I was very much impressed with the new car, so——

Q. Did you drive the car around any place?

A. I did drive it around the parking lot there.

Q. Could you show us on the diagram up here on the board, use this pencil to point out, show us where you drove it around?

A. This area here looks small on the picture, but it is a wide area down there on the pier, so we drove around here. There was hardly any cars around so we drove it around in this area. I mean I drove and Teague was sitting alongside of me.

Q. You drove it around and Mr. Teague was sitting alongside of you? A. Yes. [226]

Q. Incidentally, before you sit down, do you remember where the car was parked that night when you started driving it around?

A. In the parking lot.

(Testimony of Ernest C. Reid.)

Q. Could you show us about where, as near as you can remember it, and put an "X" there?

A. Somewhere around there.

Q. Near the center of the parking area?

A. Yes, sir.

Q. Is this about it?

A. That is where I started from.

Mr. Roos: Let me put a little circle around it. I will mark it R-1.

Mr. Petrie: R-1, Mr. Roos?

Mr. Roos: R-1 where Mr. Teague's car was when Mr. Reid got in it.

Q. And how long did you spend driving his new car around the parking area, would you say?

A. I would say three or four minutes, five minutes, ten minutes.

Q. And what did you do after that?

A. I looked the car over and tried the power out in that little dock over there and looked it over good, and then he sildes over in his car and I jumped in mine—parked alongside of my pickup truck, and then I jumped in there, my car, and he [227] proceeded ahead of me, and I followed him out of the gate.

Q. In other words, you got out of his car and got in your own pickup truck? A. Yes.

Q. You saw his car all the time from then on as it went out the gate? A. Yes.

Q. And you followed him out the gate in your pickup truck? A. Yes.

(Testimony of Ernest C. Reid.)

Q. How far behind him were you as you went down this area out past the guardhouse?

A. Well, I couldn't be over a hundred feet.

Q. What did Mr. Teague's car do when it got to the guardhouse?

A. I believe he slowed down. I don't remember whether he stopped, but I believe he either stopped or slowed down in the gate there and I followed him out. I stopped. The guys waved us out, so I proceeded home.

Q. And did you see which way Mr. Teague's car went as it came out the gate?

A. Yes, I believe he went up to Fourth Street. Right outside of the gate is Third Street. He turned right and I turned left.

Q. He turned right on Third and you turned left?
A. I turned left on Third. [228]

Q. Can you show us—do you want to look at this diagram?
A. Here is the gate here.

The Court: Well, he has already testified that he turned right and the other fellow turned left. That is clear enough. We understand what right and left is.

Q. (By Mr. Roos): When you were driving Mr. Teague's car around there for a few minutes did you look it over pretty carefully?

A. When I parked the car, yes, I did.

Q. Inside and out?
A. Inside and out.

Q. How many seats did it have?

A. He only had the front seat up. The back

(Testimony of Ernest C. Reid.)

seat was down. I saw the back was nice, plenty of room for a mattress to sleep in.

Q. Were you thinking about buying a new car yourself about that time?

A. Yes, I did. Come to think about it, three months later I bought a Chevrolet.

Q. And was there anything in the back of Mr. Teague's Chevrolet station wagon that night?

A. No, there was not.

Q. Calling your attention specifically to these coils of copper wire out here that are marked Plaintiff's Exhibit 2, were those coils of copper wire in the station wagon? [229]

A. Not that night.

Q. Did you ever see those coils of copper wire before today?

A. Not these particular ones, no.

Q. And you say this was around ten o'clock that night?

A. I am just assuming now; I ate—I don't know what the actual time was.

Q. I know; it is a year and a half ago, I understand that.

A. It was around that time, I guess.

Q. And if this wire had been in the station wagon did you inspect it carefully enough so you would have seen it?

Mr. Petrie: Object to that as calling for a conclusion of the witness.

The Court: Sustained. You are just laboring it now.

(Testimony of Ernest C. Reid.)

Q. (By Mr. Roos): Was the wire in the station wagon?
A. No, it was not.

Mr. Roos: You may cross-examine.

Cross-Examination

By Mr. Petrie:

Q. How long had you known Mr. Teague, Mr. Reid?

A. As I stated before, nine or ten years.

Q. Where did you first meet him?

A. We seamen meet all together.

Q. I beg your pardon? [230]

A. I met him in the union hall.

Q. In San Francisco or somewhere else?

A. No, in San Francisco.

Q. Now, you say about nine or ten years ago?

A. Yes.

Q. How long have you been with the American President Lines?

A. I say seven years in November.

Q. You said seven years in November?

A. Yes.

Q. Did you and Mr. Teague go to work for the American President Lines Company at the same time?
A. No, he was a year ahead of me.

Q. A year ahead of you. During the time that you have been there have you been working continually in that paint group or paint gang?

A. Yes, sir, except vacation times.

Q. Except when you haven't been working at all?
A. Yes.

(Testimony of Ernest C. Reid.)

Q. And during that period Mr. Teague has been the leader of that gang, has he?

A. Well, he is second in command, I should say.

Q. Who is the first?

A. There is another fellow, Alex Wharton; he is the boatswain; Teague is the leaderman.

Q. Mr. Teague is the painter leaderman? [231]

A. Yes, sir.

Q. You take your orders directly from Mr. Teague? A. Yes.

Q. How do you fix the date, Mr. Reid, of March 6th as being the night when you first saw Mr. Teague's car—Mr. Teague's station wagon?

A. Well, that's the first time I seen his car.

Q. How are you able to say that it was on March 6th that you first saw his car, March 6th, 1957? I believe that is the date you gave to Mr. Roos.

A. Well, I believe that is the day we worked that night; I have forgotten what shift, but we worked—that is the first date he brought his car down, I believe, and that is the time I went in there to take a look at his car.

Q. Do you know now that it was on March 6, 1957, that you first saw the station wagon?

A. Well, through—I believe Teague bought his car on the 5th or the 4th, I am not quite sure, but that is the first time I had to inspect his car, the first chance to look at it.

Q. How do you know that Mr. Teague bought the car on the 4th or the 5th? Is that what he told you?

(Testimony of Ernest C. Reid.)

A. No; but at least we work together; we know what is going on.

Q. I know, but this is a year and a half ago. What I am trying to get at is this: How are you able to say now that it [232] was March the 6th, 1957, that you—

A. I get what you mean. I would say about four or five days later or six days later—I have forgotten now—Teague came over and told me that they are trying to pin something on him on account of the wire that he had picked up from the night that we worked. But I was—he asked me if the stuff—if I had seen any wire in his car. I told him, I said, “They’re crazy, because I was inside your car, riding in your car and looking your car over. How could there be any stuff inside your car? When I was in there there was nothing there.”

Q. You say that was about five or six days after you drove the car around the lot that Mr. Teague came to you?

A. I couldn’t recall it now; it was somewhere around there, three or four days, six days, around there.

Q. When Mr. Teague came to you and told you this, how are you able to fix March 6, 1957, as the date on which you saw his car for the first time and drove it around?

A. Well, I don’t know; I am just telling you what time I looked at his car and drove his car around, because that was the first time his car was down there.

(Testimony of Ernest C. Reid.)

Q. And you work over there——

A. If that was March 6th, it must be March the 6th.

Q. Did you work every day during that week?

A. Yes.

Q. Could you have seen the car for the first time on March [233] the 4th?

A. No, I couldn't.

Q. I beg your pardon?

A. I couldn't, because I park in the same lot as he does.

Q. Could you have seen the car for the first time on March the 5th? A. I wouldn't know.

Q. Could you have seen the car for the first time on March the 7th instead of the 6th?

A. I am pretty sure I seen it that same night we worked. That is when I seen the car and that is when I drove it.

Q. Was March 6th the only——withdraw that. Do you know whether you worked March 6th overtime?

A. Well, I know, yes.

Q. How do you know?

A. Because I keep track of the overtime in our gang.

Q. Do you have any record that you have consulted to——

A. Yes, I believe I do down at the pier.

Q. ——to determine whether or not you worked March the 6th?

A. Yes, I have down at the shop.

Q. You have it at the shop? A. Yes.

(Testimony of Ernest C. Reid.)

Q. What other nights did you work overtime that week? A. I have it all in that record.

Q. I beg your pardon? [234]

A. I say I have it all in that record.

Q. Have you looked at the record recently? You don't have the record with you?

A. No, not recently.

Q. March the 6th wasn't the only night that you worked overtime that week, was it?

A. I would have to look at the record on that.

Q. Have you been elsewhere with Mr. Teague besides in San Francisco, Mr. Reid?

A. What do you mean?

Q. Have you been in other cities in the country with Mr. Teague? A. No.

Q. Besides in San Francisco? Have you ever been in Los Angeles with him? A. No.

Q. Were you in Los Angeles with him in 1948?

A. '48?

Q. '48? A. No.

Q. After you drove the station wagon——

The Court: He didn't answer, did he?

Mr. Petrie: I beg your pardon, your Honor. He did. He said no, that he was not.

Q. You have never been in Los Angeles with Mr. Teague, is [235] that right? A. Come again.

Q. Have you ever been in Los Angeles with Mr. Teague? A. No, not with him together, no.

Q. No. That is what I am asking you. Coming back to the night that you did drive this station

(Testimony of Ernest C. Reid.)

wagon around, where was your car parked or your pickup? A. In the parking lot.

Q. In the parking lot? Will you indicate on the diagram where your car was parked?

A. Well, I would say somewhere around there (indicating).

Q. That is quite close to where you indicated that Mr. Teague's car was parked.

A. Well, we all park together around there.

Q. Didn't you park at that time in March of 1957, nearer the utility building at the end of the pier? A. At the end of the pier?

Q. Near the utility building?

A. Mr. Sledge don't allow us to park down there.

Q. I am asking you about March, 1957. In March of last year didn't you park closer to the end of the pier next to the utility building instead of in the middle of the depressed area?

A. You mean over here?

Q. That's right. A. No. [236]

Q. Wasn't Mr. Teague's station wagon parked there when you first saw it? A. No.

Q. When you were driving the station wagon around was Mr. Teague with you?

A. Yes, he was with me.

Q. And when you finished driving the station wagon what did you do with it?

A. I parked the car and Teague slides over to his side, the driver's side, and I got out and jumped

(Testimony of Ernest C. Reid.)

in my pickup truck and he went ahead of me and I followed him out the gate.

Q. Did you both leave the area as soon as you had finished driving around in the station wagon or did some time elapse in between?

A. No, there was no time elapsed. There was no use hanging around any more when we got through work.

Q. And is that the only time you left the parking area with Mr. Teague—you in your truck and he in his car?

A. No, we usually all get out at the same time every day and we follow each other out. It is kind of heavy traffic when we get out of work down there.

Q. Did you often work overtime together and leave the area at the same time of the evening together?

A. We do.

Q. Do you remember what time of the evening it was when [237] you left on this particular occasion?

A. I stated before it was around about quarter to ten, ten o'clock, quarter after ten; I don't really recall the time.

Q. Did you stop with your pickup truck for an inspection by the guard when you left the area?

A. Yes. If I didn't see the guard wave his hand to go ahead, I would stop. If he had waved his hand, I would go ahead.

Q. Did he wave his hand to go ahead that night or did he ask you to stop?

(Testimony of Ernest C. Reid.)

A. I slowed down at the gate and he seen it was my truck so he waved his hand.

Q. He waved you on. Did you buy a Chevrolet station wagon or something else?

A. No, I couldn't go that high; I bought a cheaper one.

Q. A sedan? A. Yes.

Mr. Petrie: I think that is all.

The Court: That is all.

Mr. Roos: I have no questions.

The Court: That is all.

Mr. Roos: Thank you, Mr. Reid.

Mr. Teague.

EDGAR HAROLD TEAGUE

the defendant, called as a witness in his own behalf, being first duly sworn, testified as [238] follows:

The Clerk: Please state your name to the Court and to the jury.

The Witness: Edgar Harold Teague.

Direct Examination

By Mr. Roos:

Q. Mr. Teague, where do you live?

A. At present?

Q. Yes.

A. 6245 Cypress Avenue, El Cerrito.

Q. And your business or occupation is what?

A. I am a leaderman for American President Lines, painter.

(Testimony of Edgar Harold Teague.)

Q. And how long have you held that same job with the American President Lines?

A. I started in May, 1950.

Q. And you worked for them continuously since that time? A. I have.

Q. On the same job? A. I have.

Q. There has been some testimony here about a new 1957 station wagon. Did you acquire one in March of 1957? A. I did.

Q. Do you remember what date you got possession?

A. I do. Eleven-thirty on the 5th day of March.

Q. And what was the first day you took it to work?

A. The 6th—the morning of the 6th. [239]

Q. In the early part of March, 1957, were you the plaintiff in a personal injury case that had been settled? A. Yes, I was.

Q. And had the settlement been agreed upon before or after March 6, 1957?

A. Yes, it had.

Q. Before or after? A. It was before.

Q. And you actually got your check a few weeks later, did you? A. Yes, I did.

Q. Do you remember how much you got?

A. \$7,350.

Q. You live in El Cerrito now?

A. Yes, I do.

Q. And before that where did you live?

A. I lived at 111-37th Street.

Q. You are married, are you? A. Yes.

(Testimony of Edgar Harold Teague.)

Q. And that is Mrs. Teague here in court?

A. Yes.

Q. And how long have you been married?

A. Ten and a half years.

Q. And do you and Mrs. Teague have any children? A. Yes, we do. [240]

Q. How many have you had?

A. My own and my adopted son.

Q. Your own?

A. My own, one; I had two.

Q. One was run over by an automobile last year?

A. Yes, it was.

Q. And Mrs. Teague had some children by a previous marriage? A. Yes.

Q. How many? A. Three.

Q. And what are their ages now?

A. Now? 22, 20 and 18.

Q. And going back to the first week in March, 1957, how many children were living at home with you? A. Four.

Q. That was two stepchildren and two of your own children? A. Right.

Q. And one of the stepchildren was Jim Daniels?

A. That's right.

Q. Now, you heard the testimony in court about this copper wire, Plaintiff's Exhibit 2?

A. Yes, sir.

Q. Did you steal that copper wire from Pier 50?

A. No, sir.

Q. Did you steal it from any other place? [241]

A. No, sir.

(Testimony of Edgar Harold Teague.)

Q. Did you steal it at all? A. No, sir.

Q. Did you ever see the wire before?

A. I have seen—it looks like it.

Q. Where did you see it?

A. On the street, on Berry Street; at the Embarcadero and Berry.

Q. And when was that?

A. The night of the 6th.

Q. About what time in the evening?

A. It was after ten o'clock, say around, oh, probably ten, ten past ten, or something like that; in the neighborhood of that.

Q. And what did you do with the wire?

A. I put it in my car.

Q. And what did you intend doing with it?

A. I was going to find out if it was worth anything and then maybe probably sell it.

Q. Did it have any tags that showed the name of the owner on it?

A. No; they had a tag on it but no owner tag or nothing like that to me—no address or anything like that to me.

Q. I show you this tag, Plaintiff's Exhibit No. 3, which says on it "FH3916, Kobe," and under the number 174. Was that the tag that was on the wire? [242] A. Yes.

Mr. Roos: You may cross-examine.

(Testimony of Edgar Harold Teague.)

Cross-Examination

By Mr. Petrie:

Q. Do you have the tag, Mr. Teague?

A. No, I do not, sir.

Q. When you saw Government's Exhibit 3, that tag that said Kobe, you realized, didn't you, that "Kobe" meant Kobe, Japan? A. No.

Q. What did you think it meant?

A. Well, absolutely nothing to me, to tell you the truth.

Q. Did you know that there was a place in Japan called Kobe on that night that you discovered the wire? A. It didn't enter into my mind.

Mr. Petrie: Would the reporter read the question?

(The reporter read the question.)

A. No. I knew there was a place in Japan named Kobe, yes.

Q. (By Mr. Petrie): That is my question.

A. Yes, yes.

Q. Where were you parked that night, Mr. Teague? Will you show us on the diagram?

A. In this area right here (indicating).

Q. In the middle of the depressed area?

A. Yes.

Q. You are saying that you were not at the end of the [243] area near the utility building?

A. No, sir.

Q. Did you notice the coils of copper wire stored at the end of Pier C on that night?

(Testimony of Edgar Harold Teague.)

A. No, sir, I don't pay any attention to no cargo, because I am not pertaining to any of the cargo of American President Lines.

Q. What were you doing that night?

A. We was painting a galley on a ship.

Q. What?

A. We was painting a galley on a ship.

Q. On the President Taylor? A. No, sir.

Q. What ship?

A. I think it was President Harrison.

Q. Where was that ship?

A. It was laying on this pier right here alongside of this.

Q. Did you do any work on the President Taylor that night? A. No, sir.

Q. Do you know when the President Taylor docked? A. Yes, sir.

Q. Did it dock around the 6th or the 5th or when?

A. I think it docked the morning or the afternoon—wait a minute, now; I don't know if it was the afternoon of the 5th or the morning of the 6th, because we worked on the Taylor [244] painting the hull on the 6th, that day.

Q. Will you show us on the diagram, Mr. Teague, where the wire was on Berry Street or on the Embarcadero when you found it?

A. Yes, sir, it was right in this section right here.

Q. Will you mark a T-4— A. T-4?

Q. T-4 where that wire was.

(Testimony of Edgar Harold Teague.)

A. I can't get it to mark.

Q. You are marking over the scotch tape?

A. Yes.

Q. In the middle of Berry Street where it runs into the Embarcadero? A. That's right.

Q. Were all five coils together or—

A. No, there was one laying, oh, a considerable distance, I would say approximately as far as from here to the—to that—what do you call that—right behind those people sitting right there, one coil by itself and then—

Q. I am not following you. You say the first coil that you saw was that far away from your car when you saw it? A. No.

Q. I misunderstood you, then; I want to make sure that I did understand.

A. I say it was laying about that far from the other coils.

Q. Was the coil alone closer to you than the other four [245] coils? A. That's right.

Q. How far away was it from your car when you first noticed it?

A. The other was, oh, I would say approximately fifteen or twenty feet nearer it.

Q. The first coil was fifteen or twenty feet from your car when you discovered it?

A. No, the other coils was—

Q. The other coils were fifteen or twenty feet from the first coil? A. No, from my car.

Q. What about the first coil?

(Testimony of Edgar Harold Teague.)

A. Well, it was actually in the rear of my car at that time when I got my car stopped.

Q. Did you run over it? A. Yes.

Q. Is that what caused you to stop?

A. That's right, sir.

Q. Do you remember telling Mr. Barthol during his first interview with you that you saw the first coil ahead of your car and you stopped the car short of the coil?

A. Yes, I did, because——

Q. How do you reconcile that with what you are saying now?

A. I forgot about running across this one first at that [246] time; that's right.

Q. How many painters work under you, Mr. Teague? A. Under me?

Q. Yes. A. Five other fellows.

Q. Are they all painters? A. Yes.

Q. Is Mr. Reid one of them? ,

A. Yes, he is.

Q. Had you at any time during your work for American President Lines noticed as cargo waiting to go out, wire similar to the wire that we have here?

A. I never paid any attention to no cargo; maybe a new automobile or something like that.

Q. Don't you ever look at what cargo is on the Pier, Mr. Teague?

A. No, sir. I have no consumption of the cargo going out or in on those docks.

Q. Are you telling us that you have never seen

(Testimony of Edgar Harold Teague.)

any cargo stored on the docks? A. Oh, yes.

Q. Waiting for a ship to go out.

A. I could walk down to the end of the pier and you could ask me what cargo is sitting there and I couldn't tell you.

Q. Can you recall now any particular kind of cargo that [247] you have seen on the pier waiting to go out?

A. No; automobiles, I could recall them.

Q. Other than automobiles, anything else?

A. No. They have all kinds of general cargo going out of these piers.

Q. You have worked down there almost daily through the years, haven't you? A. Yes, sir.

Q. Much of the cargo is uncovered, isn't it, that is, not crated? Aren't they stored on pallets or stored out in the open? A. Oh, yes.

Q. Some of the cargo is not covered so that you can see what it is if you pay any attention to it?

A. Oh, that's true.

Q. Have you been down to the docks of the Pacific Far East Line?

A. Oh, yes, I worked there.

Q. What piers does that company occupy?

A. Right at the present?

Q. At the present time.

A. At present it covers 44 and 46, at present.

Q. Are those shown on our diagram?

A. Yes, these two piers here (indicating).

Q. Those are piers at the end of Berry Street,

(Testimony of Edgar Harold Teague.)

where Berry Street runs into the [248] Embarcadero? A. That's right.

Q. How many times have you been down to those piers in the last three or four years?

A. Oh, approximately maybe four or five times.

Q. Have you noticed——

A. Pardon me. Excuse me. You mean inside the piers?

Q. Yes, actually down on the pier.

A. Approximately about four or five times.

Q. During those occasions did you notice cargo on those piers waiting to go out?

A. No, because my incident down there was to see about boats, the way they was doing their work for painting preparations, because we have another—considering—that they have the same kind of statute with PFE that we do.

Q. In March, 1957, for example, you knew that the Pacific Far East Line was shipping cargo from those piers, didn't you?

A. Oh, yes. Wait a minute. You mean '46?

Q. No, March, 1957. A. Oh, yes.

Q. At the time we are concerned about here.

A. Gee, I don't think they moved over during that time; they was at 45 at that time. You see, actually we used to have those piers.

Q. 45 is just off?

A. No, it isn't. Oh, 45, it is eight miles down on the [249] other end of the waterfront; it is down on Fisherman's Wharf, 45.

Q. What is the pier next to 44? A. 42.

(Testimony of Edgar Harold Teague.)

Q. Oh, they are even numbers?

A. Even numbers is north—no, south of the Ferry Building, and the odd numbers is north.

Q. Do you know when Pacific Far East Line moved to Piers 46 and 44?

Mr. Roos: Your Honor, I don't want to object, but I think he is getting awfully far afield.

The Court: Sustained.

Q. (By Mr. Petrie): Do you know that either American President Lines or Pacific Far East Line was occupying Piers 44 and 46 in March of 1957?

A. Not American President Lines, no.

Q. What was the predecessor company? What company preceded Pacific Far East Line?

A. Not offhand, I couldn't say, because I know PFE has them now.

Q. Those piers were being worked in March of 1957, were they not?

Mr. Roos: This is still the same line of questioning, your Honor; it is completely immaterial.

The Witness: I can't recall on that. [250]

Q. (By Mr. Petrie): You don't know if they were or not?

A. I will tell you one thing; I think the Lalani used to come in there once to load passengers.

Q. When you discovered that wire in Berry Street, Mr. Teague, didn't it occur to you that it might belong to a shipment going out from one of those piers along the Embarcadero?

Mr. Roos: To which we object as incompetent, irrelevant and immaterial, what might have oc-

(Testimony of Edgar Harold Teague.)

curred to the witness. He has already testified on direct he found it and intended to sell it.

The Court: Overruled.

Q. (By Mr. Petrie): Didn't that cross your mind?

A. No, sir, it didn't. Absolutely not, not when it was laying in the middle of the road.

The Court: Why did you pick up the wire?

A. Your Honor, I will tell you. I was coming home that night—that's the way I go home every night—and I was proceeding on home. Gee whiz, that would be just like you walk out of here right now and I get in my car and I found something in the middle of the highway, I would pick it up, just common nature to do it.

The Court: But this weighed 500 pounds; pretty heavy to pick up, wire that weighed 125 pounds at a crack.

A. It is not very heavy to me, sir. [251]

Q. (By Mr. Petrie): When did you see Mr. Daniels to tell him about getting a heater or radio in the station wagon? A. In the morning.

Q. In the morning following your going home?

A. Yes.

Q. Did you tell him that there was wire in the station wagon? A. Yes, I did.

Q. Did you tell him to sell the wire?

A. No, I asked him to get me a price, to see what it was worth.

Q. Did you tell him what it should be worth?

A. No, I did not.

(Testimony of Edgar Harold Teague.)

Q. Didn't you tell him that he should get a price of 30 to 35 cents for the wire?

A. Oh, gee, I have no idea how much that stuff would be worth.

Q. You have had some experience in selling similar items, have you not, Mr. Teague?

A. Pardon me, sir?

Q. You have had some experience in selling similar items before? A. Oh, absolutely.

Q. Have you sold wire before?

A. No, sir. [252]

Q. Have you sold nozzles and fittings?

A. Yes, I have.

Q. On how many occasions?

A. Oh, I would say approximately maybe four or five times.

Q. Where have you sold those nozzles and fittings? A. Over in Oakland.

Q. To what company?

A. Right now I couldn't—I really don't know right now, no, sir.

Q. What kinds of nozzles and fittings were those?

A. Off of the end of hoses—waterhoses.

Q. Where did you get them?

A. Out of the dump; they discard all these things into boxes that they are going to take out to the dump.

Q. Who discharges them? Someone in the American President Lines?

(Testimony of Edgar Harold Teague.)

A. Oh, yes, they take them off of ships in garbage cans and put those in boxes, stuff like that.

Q. Did you take them out of there or have you taken them out of there from time to time?

A. Yes, I have.

Q. Did you have the permission of anybody to do that?

A. No, no, I don't.

Q. Did you hear from Mr. Daniels on March 7th about this wire? [253]

A. Yes, he said——

Q. About it being taken over by the Richmond Police Department?

A. Yes, I did.

Q. Did he call you or did he come to see you?

A. No, when I got home I was informed about it.

Q. On the evening of March 7th?

A. Yes.

Q. And did you go the next day——

A. Yes, I did.

Q. ——to see Inspector Middleton?

A. Yes, I did.

Q. Do you know anybody shipping aboard the President Taylor on that voyage to Japan, Mr. Teague?

A. No.

Q. Didn't you know anyone on the crew?

A. Not—no, sir.

Q. Do you know Mr. Voeks?

A. Voeks?

Q. Voeks—V-o-e-k-s.

A. No, sir, I don't think so. There is a—I'll say that—pardon me, but there is a lot of people I know them by face, but I don't know their names.

Q. Well, to your knowledge now did you know anybody aboard the President Taylor? [254]

(Testimony of Edgar Harold Teague.)

A. Not as I recall, sir.

Q. On that voyage? A. No, sir.

Q. Did you know when the President Taylor was supposed to get to Japan? A. No, sir.

Q. Did you know what its first port of call was in Japan? Did you know that it was Yokohama?

A. No, sir.

Q. Suppose you would want to send a letter to somebody on the President Taylor and get it to them at the first port the ship hit in Japan, how would you address the mail? To the American President Lines office in Yokohama or Tokyo, or how would you address the mail?

A. Well, yes; I guess I would, yes.

Q. You have done that from time to time, haven't you?

A. No, sir, I don't write.

Q. You have never written——

A. Never written a letter to a man on a ship.

Q. But you know you can do that by sending a letter through the American President Lines office, do you not?

A. I suppose—very likely so, yes.

Q. Was there any reason for sending Mr. Daniels to find out about the price of wire rather than taking care of that yourself, Mr. Teague? [255]

A. Well, I had already had an arrangement to have a radio put in my car, and the man told me to bring it back the next day or when ever I had a chance to bring it in, and so at this time I figured I would let my kid put the radio in the car and while

(Testimony of Edgar Harold Teague.)

he had the car he could check to see how much that was worth.

Q. Did you go to work on March 7th?

A. Yes, I did.

Q. Did you take Mr. Daniels' car to work on that occasion? A. Yes.

Q. Did you tell anyone in the American President Lines about your discovery of the wire on the night before?

A. Not as I recall; I can't recall that.

Q. Did you tell anyone on March 7th about finding the wire on Berry Street the night before?

A. No, not as I can recall, no.

Q. Where did you work before you went to work for American President Lines, Mr. Teague?

A. I was on a ship, the Rolandi.

Q. I beg your pardon? I didn't catch that name.

A. I was on a ship, the Rolandi.

Q. How long were you on that ship?

A. Oh, approximately two—approximately two and a half months.

Q. What ports of call did that ship make? [256]

A. It run north up to Vancouver—no, some ports up the Columbia River there; Coos Bay, that's it.

Q. Did it call only at ports in the Western Hemisphere? A. No, it went——

Q. Did it go to Japan?

A. No, no, it was just—it is a little bit of a scow.

Q. What did you do before that?

A. I used to work with PFE—Pacific Far East Line.

(Testimony of Edgar Harold Teague.)

Q. During what period?

A. That was from '48—about half of '47, I would say, to around, oh, April of '49.

Q. What was your job with that company?

A. Painting; painting, the same as—

Q. The same job?

A. No, not the same; the President is like leader-man, but painting hulls and working inside the ships.

Q. Was that work in San Francisco?

A. Yes, it was.

Q. At what pier? A. At Pier 45.

Mr. Petrie: Can I have just a moment, your Honor?

That is all.

The Court: Any other questions?

Mr. Roos: I have no further questions. Thank you.

The Court: That is all. [257]

Do you have another witness?

Mr. Roos: Yes, your Honor.

The Court: I think we had better take the recess. It is getting rather warm here.

Mr. Roos: Your Honor, may we talk about this matter before you recess?

The Court: The jury may be excused.

(Thereupon, the jury retired from the courtroom and the following proceedings were had in the absence of the jury:)

Mr. Roos: Your Honor, on the question of this

weighmaster's certificate, Section 12,704 of the Business and Professions Code seems to cover it. The certificate is a form specified by the State; the seal is issued by the State; public weighmaster's certificate forms shall be the property of the State. It is a misdemeanor—all public weighmasters must keep and preserve records for four years, true copies of all certificates. Any person who abuses the use of the certificates, requests a false certificate, any weighmaster that issues a false certificate, and so forth, is guilty of a misdemeanor.

They seem to be issued under authority of State law, but I can't find anything, and Mr. Haid hasn't either, specifically as to the admissibility of a certificate in evidence; but it certainly seems to have all the attributes of a public certificate.

The Court: There is some provision of the [258] California Code that provides that such public documents are admissible, is there?

Mr. Haid: Yes, there is, your Honor. In the California Code of Civil Procedure there is a provision concerning public records, but there is no specific provision in that Act covering this particular kind of thing, and I can't find it—in the few minutes that I have had rushing around, I couldn't find any case which said it was a State certificate.

The Court: Do you consider it of sufficient importance that we have to consider this matter further?

Mr. Haid: Incidentally, your Honor, I might say that I called Mr. Gallagher, the gentlemen who issued this thing, and he said he would be happy to

get himself up here but he is all by himself this afternoon; his girl is sick or something or other and he is by himself, otherwise he would come up and identify it.

Mr. Petrie: I just can't understand, your Honor, why this wasn't done in the proper fashion by calling the weighmaster. Mr. Burroughs tells me that the coils were on the truck and that the whole thing was weighed at one time.

Mr. Roos: That is always the way it is done.

Mr. Petrie: Apparently something was subtracted.

Mr. Roos: The truck is weighed with the coils on it, then the coils or the material to be weighed is taken off the truck and then the truck is weighed without them, and that [259] gives the tare weight.

Mr. Petrie: We don't know when that was done. Mr. Burroughs didn't notice it being done either.

The Court: In other words, Mr. Burroughs just went with the true?

Mr. Petrie: Went with the truck with the evidence.

The Court: It was weighed while he was there with the stuff on it and then he left with the truck with the stuff on it?

Mr. Petrie: Yes. I don't think the coils were ever off the truck while Mr. Burroughs was there.

Mr. Haid: That is the regular way of doing it. I talked with Mr. Gallagher and he had told me exactly how it was done. He said he would be happy to get up here but that his girl was away.

The Court: There is this 530 pound report. If you want it in evidence——

Mr. Roos: Yes, very definitely.

The Court: There seems to be some question about it now. If you want it in evidence, have the man here the first thing in the morning if you consider it important.

Mr. Roos: I have to have the case go over another day. I never heard of such a thing. Here is the FBI agent goes along to the public weighmaster and then evidently went out just for a short beer or something—— [260]

The Court: You are not arguing this case with somebody on the street, counsel. The FBI man didn't go along just to be a witness; he went along because this was government exhibit property, and it is not his fault, and there is no use blaming him for it. It is your evidence that you want to get in. If you haven't got the proper foundation for it, it is your fault.

Mr. Roos: We never dreamed it would be questioned, your Honor. That is why I had Mr. Petrie send Mr. Burroughs.

The Court: If it is so important, the difference between 530 pounds—and what was the other figure?

Mr. Petrie: 460.

The Court: If that is so important, then it is important to find out whether or not the weighmaster's record of the tare is accurate or not.

Mr. Roos: We will get him in the first thing in the morning.

The Court: All right; if you consider it impor-

tant, I am not going to bar you from this evidence. I can't see the slightest importance to the matter one way or the other, but you seem to think so and it is your case, not mine.

Mr. Roos: I will have him here in the morning or I will have him here at four o'clock if your Honor wants us to subpoena him.

The Court: All right. [261]

Mr. Roos: I only have one more short witness, your Honor it might delay things and keep the jury here.

Mr. Petrie: Your Honor, perhaps I can talk to this weighmaster over the telephone; I don't want to hold the matter up.

The Court: Well, leave it in abeyance and see whether you can't work it out between the two of you.

You have one more short witness. What is it that he told you? Why don't you tell the United States Attorney? There is no secret about it. What did he say to you?

Mr. Haid: He said Mr. Burroughs came down with the fellow on the Lyons Van & Storage truck. He says they weigh everything together and then they weight the truck separately and subtract the weight of the truck.

The Court: That is what the FBI agent said?

Mr. Roos: That is not so. I didn't understand Mr. Burroughs to say that. He said he wasn't there. He said he left.

Were you there every minute of the time?

Mr. Burroughs: The Lyons truck came here to

the post office building and the men from Lyons loaded the truck with the wire. I got in the truck. We drove out to these scales. I got out of the truck. They weighed the truck. He already had some figures on some paper, apparently from a previous weighing of the truck, at which weighing I was not present. I [262] got back into the truck with the truck driver. We drove back here to the post office. We took the coils out of the truck and placed them back in the Marshal's office and the truck departed.

Mr. Haid: The way I understand the picture, he said he weighed the truck separately. I don't know how you get the weight of the truck.

Mr. Petrie: I will try and satisfy myself on that, your Honor.

(Discussion between Court and counsel as to further conduct of the trial not included in this transcript.)

(Thereupon, after the recess the jury was brought back into the courtroom and the following proceedings were had:)

Mr. Petrie: Your Honor, the Government will not object to the introduction of the San Francisco Weighmaster's certificate by Mr. Roos:

The Court: All right. It may be marked.

The Clerk: That is Defendant's Exhibit L admitted into evidence.

(Whereupon, Defendant's Exhibit L for identification was admitted into evidence.)

The Court: That concludes all the evidence in the case, does it?

Mr. Roos: No, your Honor. There is one short witness that I expected to be here we found wasn't here and [263] contacted him, and his wife is sick. He is still in Richmond. I instructed him to be here the first thing in the morning. He will only be a very short witness.

The Court: A character witness?

Mr. Roos: I am sorry. I expected him to be here at two o'clock this afternoon.

The Court: A character witness?

Mr. Roos: Yes, your Honor.

The Court: Nine-thirty tomorrow morning?

Mr. Roos: I will see that he is here at nine-thirty.

The Court: Members of the jury, aside from some very brief evidence, the case is closed as far as the evidence is concerned. The attorneys will want to make some argument to you which would make it too late tonight, so will you be here tomorrow morning at nine-thirty and we will try to get the case in your hands tomorrow morning. You may be excused.

(Thereupon, the jury retired from the courtroom and the following proceedings were had outside of the presence of the jury:)

The Court: Gentlemen, I take it that we will commence the arguments tomorrow morning some time shortly after nine-thirty?

Mr. Roos: Yes, your Honor.

May I at this time offer Defendant's Exhibit [264]

E marked for identification into evidence? It is the March 22, 1957, letter of Captain Johnson to Duncan Ward of the American President Lines.

The Court: That was admitted in evidence.

The Clerk: I still have it marked for identification.

The Court: Is that the letter from the Captain?

Mr. Petrie: That is the letter from the Captain. I objected to it as being incompetent.

Mr. Roos: The Clerk merely has it marked for identification.

Mr. Petrie: The Captain admitted that he wrote something regarding a second check, your Honor. I submit that the letter itself is incompetent.

The Court: Let it be admitted.

Mr. Roos: Thank you, your Honor.

The Clerk: Defendant's Exhibit E admitted in evidence.

(Whereupon, Defendant's Exhibit E for identification was admitted in evidence.)

(Thereupon, there occurred discussion between the Court and counsel as to the length of time required for argument and as to the instructions the Court proposed be given in this case, which was not included in this transcript.)

(Due to the absence of the Judge, the further hearing of this case was not resumed until Monday, September 22, 1958, at 9:30 [265] o'clock a.m.)

Monday, September 22, 1958—9:30 A.M.

(The following proceedings were had out of the presence of the jury:)

Mr. Roos: I wanted to ask your Honor two questions. I have two instructions——

The Court: You can do that now.

Mr. Roos: I wanted to renew my motion for a directed verdict and motion for acquittal made at the close of the Government's case. The only questions I had on instructions——

The Court: Renew your motion at the close of the interrogation?

Mr. Roos: Yes.

The Court: But you haven't completed your case, because you have one character witness.

Mr. Roos: One character witness.

The Court: Would you stipulate, counsel for the Government, that the motion may now have been deemed to have been made at the close of this character witness' testimony with the same force and effect?

Mr. Petrie: Yes, your Honor.

Mr. Roos: Mr. Petrie tells me he is going to have some rebuttal.

The Court: Are you?

Mr. Petrie: Just one witness. I proposed a [266] stipulation to Mr. Roos which he is unwilling to enter into. It will be very short, only one or two questions.

Mr. Roos: There is no question of fact; I just think it is incompetent, irrelevant and immaterial.

Mr. Petrie: Well, perhaps we can argue that out. If Judge Goodman decides it is relevant and material, perhaps you will be willing to stipulate to it.

Mr. Roos: I would.

Mr. Petrie: I have asked for a stipulation, your Honor, that the defendant belongs to the same union as seamen do aboard the American President Line ships. I intend to refer to that fact in arguing a group solidarity that would induce somebody aboard the ship to make five coils out of ten between Yokohama and Kobe, because that is apparently what happened. I think the fact is relevant and material that he does belong to the same union with people aboard that ship.

The Court: What you want is to establish the fact that the defendant belongs to a union which also includes seamen in it?

Mr. Petrie: As making it more likely that someone aboard the President Taylor would help the defendant out by covering for him and converting five of these coils into ten between Yokohama and Kobe.

Mr. Roos: That is fantastic, your Honor.

The Court: I would see no objection to the [267] fact being in evidence as part of the defendant's case on the dock as to what union he belonged to, but I don't see as a basis or relevancy of that fact that seamen belong to the same union would have a proximate relevance.

Mr. Petrie: I have got two thoughts about that, your Honor, to show it is relevant; (1) it would make it more likely that the defendant would be better known to the people aboard the President

Taylor and that they would know him so that he would have somebody to contact; secondly, it would make it more likely that some seaman aboard the President Taylor would be willing to risk his own interest to protect the defendant.

The Court: Mr. Petrie, I think I would hold against you on that. I think that is in the realm of speculation. I don't think you would be entitled to make that argument.

Mr. Petrie: I will abide by your decision on it, your Honor. That was the thought that I had.

The Court: That would be in the realm of speculation and conjecture and would not, I think, fall reasonably within the area of circumstantial evidence.

Mr. Petrie: I will not pursue it.

Mr. Roos: Thank you, your Honor.

The Court: Then you have just the one witness, the character witness?

Mr. Roos: Yes, your Honor.

The Court: Do you have one other matter with [268] respect to instructions you wish to take up?

Mr. Roos: Just in reviewing notes the other day, your Honor didn't mention giving the usual instructions on character evidence, and I presume it would be given.

The Court: It may be considered along with other evidence. That is the usual instruction.

Mr. Roos: It is sufficient to raise a reasonable doubt.

The other instruction was I presume your Honor

would give the general instruction that the witness is presumed to speak the truth.

The Court: Oh, yes, I give rather fully on the subject of presumptions in that regard.

Mr. Roos: If it is stipulated that the motion be made now with the same force and effect as though it were made at the close of all the evidence—as I understand it, you stipulate to that, Mr. Petrie?

Mr. Petrie: So stipulated.

Mr. Roos: I would like to move at this time, your Honor, for a judgment of acquittal on the grounds that the evidence is legally insufficient here to sustain a conviction; primarily on the ground that it is legally insufficient to prove a *corpus delicti*; in other words, that these five coils of wire was ever stolen from this ship, aboard the President Johnson. 186 coils went aboard and 186 coils went off. As far as any [269] weight discrepancy is concerned, the weight discrepancy, if we accept the 22,000 pounds at Federated Metals is accurate, and accept the 21,501 pounds at Japan pursuant to the Japanese weighmaster's certificate as accurate, we have a discrepancy of 499 pounds. That doesn't jibe with either the FBI weight in Richmond for this wire of 531 pounds, or the weighmaster's certificate of last week at Lyons Van & Storage of 460 pounds. There is absolutely no evidence to show that this wire came from that shipment and no *corpus delicti* has been proven.

The Court: I considered the point that you raise in connection with your motion at the conclusion of the Government case.

Mr. Roos: Yes, your Honor.

The Court: I am satisfied that it is a jury question. I will deny the motion.

(Thereupon the jury was brought into the courtroom and the following proceedings were had:)

The Court: Good morning, ladies and gentlemen. I am sorry that we had to continue the case to this morning, but I have one of these old-fashioned doctors and he wouldn't let me come back here on Thursday morning.

The defense has one short witness, and then we will proceed to hear the argument of the lawyers.

All right, Mr. Roos. [270]

REVEREND ROBERT D. LEWIS

called as a witness by the defendant, being first duly sworn, testified as follows:

The Clerk: Will you please state your name to the Court and to the jury?

The Witness: Reverend Robert D. Lewis.

Direct Examination

By Mr. Roos:

Q. Where do you live, Mr. Lewis?

A. 736 South 46th, Richmond.

Q. And what is your occupation?

A. I am Pastor of the First Southern Baptist Church.

Q. And where is that church located?

(Testimony of Rev. Robert D. Lewis.)

A. It is located at 47th and Potrero in Richmond.

Q. And is the defendant, Ed Teague, and members of his family members of that church?

A. Yes; they are.

Q. Do they attend regularly?

A. Yes; they do.

Q. How long have you known Mr. Teague?

A. I have known Mr. Teague approximately the time that I have been Pastor of the church, which is going on my third year.

Q. And would you tell us in what connection you have known him?

A. I have known him as his Pastor. I have ministered to [271] his family. Mr. Teague is, like I have already said, faithful to the church. He is working with about thirty RA boys, which is the Royal Baptist group of our church. He is also a Sunday School teacher, will be this year, of an intermediate boys' Sunday School class, and I some time administer to the needs of the Teague family in the loss of their little boy also.

Q. Would it be accurate to say that your relationship with him has been closer than your relationship with the average member of the church?

A. Due to the tragedy that struck his home, yes.

The Court: Would you mind answering that question, Reverend? Is that true?

The Witness: Well, I will have to answer it this way, because I do not show partiality to my members——

(Testimony of Rev. Robert D. Lewis.)

The Court: Why don't you ask him another question?

Q. (By Mr. Roos): What I mean is, would you say that you knew him better, had been in closer contact with his family, than you have been with the average member?

Mr. Petrie: I will object to that as calling for a conclusion, your Honor.

The Court: Sustained.

Q. (By Mr. Roos): I take it, Reverend, that your connection with the Teague family has been more than just seeing them in church on Sunday?

A. Yes. [272]

Q. From your contacts with him and what you have known about him, would you tell us whether or not you are familiar with his general reputation for honesty and integrity in the community in which he lives? A. I have——

The Court: Just answer "Yes" or "No," if you will, please.

A. Well, yes.

Q. (By Mr. Roos): Are you familiar with it?

A. Yes; I am familiar with it.

Q. And what is his reputation for honesty and integrity? A. It's good.

Q. And during the time that you have known him, other than with regard to the offense for which he is on trial here, have you ever heard anything against him? A. No; I haven't.

Mr. Roos: Thank you, very much, Reverend. You may cross-examine.

(Testimony of Rev. Robert D. Lewis.)

Cross-Examination

By Mr. Petrie:

Q. Reverend Lewis, how long has Mr. Teague been a Sunday School teacher?

A. This is Mr. Teague's first year.

Q. You mean he is going to start this Fall to teach? A. Yes. [273]

Q. Or he has started this Fall to teach?

A. Yes.

Q. When did Mr. Teague lose his boy?

A. I would have to call on someone else; I don't know the exact date, but it has been several months ago.

Q. Was it this year or was it last year?

A. It was this year, I believe.

Q. Prior to Mr. Teague's losing his boy, did he attend church regularly?

A. He was not as regular in attendance before he lost the boy, no.

Mr. Petrie: I have nothing further.

The Court: That's all.

Mr. Roos: The defendant rests, your Honor.

The Court: Are you ready to proceed to argue the matter?

Mr. Petrie: Yes. Shall I proceed, your Honor?

The Court: You may.

OPENING ARGUMENT TO THE JURY ON
BEHALF OF THE GOVERNMENT

Mr. Petrie: May it please your Honor, Mr. Roos and ladies and gentlemen of the jury: This will be the Government's opening argument. I will be followed by Mr. Roos who will make the closing argument for the defendant. The Government then has an opportunity to make the final closing argument. It is proper that the Government should both open and [274] close, because it carries the burden of proof and that is a heavy burden in a criminal case.

After argument, Judge Goodman will instruct you on the law. We lawyers may anticipate his instructions in one regard or another, but I know I don't need to tell you that what Judge Goodman tells you the law is is what you accept as the law.

I am going to try to give you the Government's view of the evidence now. I will be commenting on the evidence. If your recollection of what the witnesses have said, or if your recollection of the documents differs from mine, of course, you rely on your recollection and not what I say.

What is the charge? The defendant is charged with stealing from a wharf, with intent to convert to his own use, copper wire which was a part of a foreign shipment and which is worth more than \$100.

First, are you satisfied that there was a foreign shipment? I don't think there is much question of that. Mr. Teller of Federated Metals told you about

the transaction. His company sold to a New York broker 186 coils of copper wire. The New York broker in turn sold those 186 coils to a Japanese consignee and the coils were directed to Kobe, Japan. Mr. Rowland from American President Lines introduced the photostatic copies of the bill of lading and other documents. That is Government's Exhibit 7-A. That is an exhibit which, together with the other [275] exhibits, you may call for and examine in the jury room if you like. I expect Judge Goodman to instruct you that you may consider the bill of lading showing the shipment of 186 coils from San Francisco to Kobe, Japan, in the absence of any contrary evidence, to be evidence that there was such a shipment. So I don't think that you should be troubled about the fact that there was a foreign shipment in this case.

Was the material stored at the wharf? Again, and while this was a very short case, because of the intervening few days, it may be helpful to you for me to recall briefly the evidence. You will recall that three witnesses: White, the truck driver; Schearn, the man who loaded the coils onto the President Taylor; and Captain Sledge—all placed the wire at the end of Pier 50, at the end of Shed C. You recall that Delehanty, the incoming checker, placed it at the end of Shed D; but you may well think, in view of the testimony of the others, that Delehanty was mistaken. In any event, the material was certainly stored at the end of the wharf.

Now we come to the crucial question in the case: Were the five coils of copper wire part of this

foreign shipment? Several witnesses testified that the wire was identical in kind to that included in the shipment. But you have a direct link, linking these five coils of wire with the 186 coils in the shipment, don't you? That is Government's Exhibit 3. That is the tag, you recall, that reads, "FH3916, Kobe," with the number [276] 174 on the right-hand side, and the same matter printed on the reverse side of the tag. That is the tag that Mr. Calkins from Federated Metals identified as the tag that he placed on the 174th coil in that shipment. You remember he said he tagged each of the 186 coils in the shipment with such a tag and that this tag bears the number 174 because it was placed on the 174th coil. So there can't be any question about this. Mr. Calkins identified it and the defense has made no attempt to contradict his testimony.

Officer Middleton told you that when he took the five coils from the station wagon of the defendant at the Richmond Iron & Metal Company this tag was lying on top of one of the coils. It was the only tag that was recovered. That is the link, the Government submits, ladies and gentlemen, that shows you beyond question that these five coils came from that shipment.

The defendant, after the testimony of Officer Middleton, admitted that he saw that tag when, as he says, he picked up these coils of wire on Berry Street.

That is the starting point. You should be satisfied from that that these five coils came from the shipment of 186 coils; that those five coils never

left San Francisco, and they never reached Japan. And that is confirmed by Captain Johnson's count of 181 coils at Yokohama when the boat first docked. You will recall that he told you that he checked the [277] shipment of coils; that a Japanese checker checked the shipment of coils and that his Mate, Foley, checked and all their figures correspond; there were 181 coils. That is to be expected because you know that the five coils did not leave San Francisco.

Then we have the strange occurrence that by the time the boat reaches Kobe three days later, there are 186 coils. You will recall that the coils are of irregular size. Now, if you are satisfied, as I submit you must be, that only 181 coils left San Francisco—if you are satisfied as to that, then the only explanation for their still being 186 coils at Kobe after the count of 181 in Yokohama is that someone aboard that ship made ten coils out of five—some seaman, some friend of the defendant's made ten coils out of five—to cover up for the defendant and to protect him.

Mr. Roos: If your Honor please, I hate to interrupt counsel's argument, but is it proper for him to ask the jury to indulge in speculation and surmise?

The Court: I don't think there is any reason for the interruption.

Mr. Roos: I am sorry, your Honor.

The Court: Counsel can make arguments from the evidence just as you can.

Mr. Roos: All right.

Mr. Petrie: You knew, ladies and gentlemen, that 186 coils were shipped by Federated. Mr. Calkins told you that. [278] You know that 186 coils and no more were received at the dock at American President Lines, because Delehanty, the checker, told you that he checked each of the coils off; is that so? That's why I say to you if you are satisfied that these five coils came from that shipment and that they never left San Francisco, then the only explanation for there being 186 coils at Kobe is that someone aboard the President Taylor made ten coils out of five to cover up for this defendant.

We call, in addition, confirmation of that. The weight, according to Mr. Calkins' weighing at Federated Metals, was 22,000 pounds. You can look at Government's Exhibit 8. That is the certificate of the Japanese weighmaster at Kobe. It carried a weight of 21,501 pounds, a differential of about 500 pounds.

Mr. Roos may say that doesn't match the 460 pounds according to the defendant's weight certificate of the weight of these coils a week ago Friday; it doesn't match the 531 pounds. But you may well be satisfied that that approximation is close enough to satisfy you that the shipment was short in weight by the amount that these five coils weigh.

Now we come to the value in this case, ladies and gentlemen. That is one of the elements. You must find that the coils were of a value of more than \$100 in order to return a general verdict of guilty; but I expect Judge Goodman to instruct you that

your possible finding that these coils have a value of [279] less than \$100 will not prevent you from finding the defendant guilty but that, in that event, you must make a finding that the coils are worth less than \$100. I am going to leave the matter of value entirely with you, with just a few observations.

You are going to come to the value of these coils, of course, by using two factors: The weight of the coils and the value of the property at the time that they were taken. Taking the defendant's figures of 460 pounds according to the weighmaster's certificate, and the defendant's lowest price from what dealers would pay according to the American Metal Market publication—that was $23\frac{1}{2}$ cents; you recall that the prices quoted were $23\frac{1}{2}$ cents to 24 cents. Multiply those two factors and I think you get about \$108. Giving the defendant the benefit of the figures on the value, you should be satisfied that these coils are worth more than \$100.

But in addition, you recall that Brandeis, Goldschmidt, the New York broker, paid $32\frac{3}{4}$ cents for the copper; that Mr. Barthol weighed them in Richmond and he found they weighed 531 pounds; and Mr. Teller from Federated, subtracting 3 to 4 cents from the price of electrolytic copper, gave it as his best estimate that the going value of copper on March 6, 1957, was about 27 to 28 cents. I am not going to burden you with that. I leave that matter entirely with you.

You recall the testimony placing the defendant on the pier on the night of March 6th. You know

he worked, [280] according to the records, seven hours overtime, from 5:00 o'clock in the evening until 12:00 o'clock at night. Do you remember Mr. Proudfoot from American President Lines testified concerning the payroll records?

Captain Sledge told you that the defendant's car was placed at the end of the pier very close to the utility building, less than a hundred feet from where the copper wire was stored at the end of Shed D.

The defendant says he left at about 10:00 o'clock that evening, and I think you needn't be concerned about whether he left at 10:00 or 12:00 o'clock except in connection with Mr. Reid's testimony. The defendant had plenty of opportunity to take the coils that night. The question that you have got to resolve is: Did he take them? He says he did not. He says he found them on Berry Street.

If you are satisfied that these five coils of wire came from that shipment that was stored within a few feet from his car, you might think it an amazing coincidence that they turned up on Berry Street that very night and that the defendant did not take them. How did they get from Pier 50 to Berry Street if the defendant didn't take them? You know that they were checked in because Delehanty told you that 186 coils were checked in there. White, the truck driver who brought the coils down there, traveled this route coming in from the wharf down Mission Rock Street. You know there is no possibility that any [281] coils on that truck were dropped off on Berry Street. White came in this

way and he returned that way. If the defendant did not take the coils, then you are confronted with a fantastic idea, and that is that someone else was a thief; that that thief took the coils on the same night, took them as far as Berry Street and abandoned them there. Wouldn't that be a fantastic conclusion to come to?

The Government submits, ladies and gentlemen, that the circumstances point irresistibly to the conclusion that the defendant took these coils of wire on that night with intent to convert them to his own use; the following day he told his stepson either to sell them or to find out what he could sell them for. Accordingly, the Government submits that you should be satisfied that the defendant is guilty of this charge.

(The argument of defense counsel and closing argument of Government counsel are omitted from this transcript.) [282]

INSTRUCTIONS TO THE JURY

The Court: Ladies and gentlemen: You have listened to the evidence in this case, I have observed, very attentively, and also to the arguments which the lawyers have made to you. What I have to say to you is by way of aid and help to you in determining the issue in the case and will be very briefly stated to you.

I observed that most of you have not had jury service before. The purpose of the jury is to determine the question of fact in the case. **The question**

of fact in this case is: Is the Defendant Teague guilty or not guilty of stealing this wire from the dock of the American President Lines?

The decision as to that question of fact is exclusively yours. It is entirely and exclusively your function as fellow citizens of the community to determine that question.

The judge very rarely comments upon the evidence in a criminal case. Occasionally he does. I make no comment to you upon the evidence in this case. You are not to draw any inferences from anything I may have said or done in ruling on objections, or myself making inquiries of witnesses, that I was intending in any way to indicate to you any opinion that I might have as to the guilt or innocence of this defendant. I had no such intent and you are not to draw from anything that may have been said in performing my duties to supervise the trial of the case and to expedite it that I was intending to draw any inferences. [283]

Consequently, it is solely your function to decide the guilt or innocence of the defendant. In like manner, it is exclusively the right of the judge to explain the law to the jury—that is, the law that is applicable to the case—and with that function on the part of the judge, the jury takes no part. You have to assume, rightly or wrongly, that the judge knows what he is talking about when he tells you what the law is.

I say that to you because it does happen very rarely that sometimes men and women come into the jury box with some preconceived notions about

social or legal or economic theories and they proceed to decide what they think the law should be and then decide the case on that basis. That is wrong. We do not permit it. If it were allowed, then no man's life or liberty or property would be safe. Consequently, you must follow the rule that the advice that the judge gives you as to the law is correct and that you must follow it.

And so it is, while we have different functions to perform—you decide the question of fact, the guilt or innocence of the defendant and the judge tells you what the law is—nevertheless, in a manner of speaking we are sort of a team because we both have the same objective and that is to see that justice is done to the best of our respective abilities.

There are some brief rules and principles that apply to all criminal cases and I will give you a few of them colloquially and they may be of help to you in performing your [284] function of determining the guilt or innocence of the defendant.

You will recall that I told you when you were impaneled that there was no presumption that arises by virtue of the filing of the indictment or charge that the defendant was guilty. I repeat that to you now.

It is the duty of the Government—the burden rests upon the Government—to prove that the defendant is guilty beyond a reasonable doubt before you may return a verdict of guilty. The defendant does not have to prove his own innocence as is the case in some continental countries. Here in America we have the Anglo-Saxon system of law and here

the burden is upon the Government to prove the guilt of a defendant charged with a criminal offense beyond a reasonable doubt.

The burden never shifts to the defendant to prove his own innocence.

You must exclude any considerations of sympathy or prejudice from your minds in deciding the case. You must invoke no prejudices against the defendant. You must indulge in no sympathy. You are to decide the case solely upon the basis of the evidence that has been presented here.

You are not to concern yourselves with the matter of punishment of the defendant in the event that you should find him guilty of the offense charged. The matter of imposing punishment in the event of a finding of guilty is for the judge alone in a criminal case. [285]

I have told you that the burden is upon the part of the Government to prove the guilt of the defendant beyond a reasonable doubt. What do we mean when we say "reasonable doubt"? Well, the definition that I give jurors is a very simple one. I say to you that a reasonable doubt means exactly what the term implies: It means a doubt based upon reason; it means the kind of a doubt that you would have after you have put your minds to work on it, after you have put your heads to work on it. It is not a fanciful doubt; it is not a conjectural doubt; it is not something that you reach up to the sky to get, but it is a doubt that results after you have thought about the matter and employed your own reasoning processes. It would be the same as

if you had some momentous decision to make in your own life on some important question and you couldn't make up your mind in it because, after you had applied your minds and your reason to it, you were undecided; you still had some doubt about it. That is a reasonable doubt.

This doctrine of reasonable doubt applies to every phase of the case. You must bear in mind that after you have considered all of the evidence in the case, if you have a reasonable doubt, then the defendant should be acquitted. If you have no such reasonable doubt, then you should find him guilty.

Whether or not you believe the witnesses who have testified in this case and the extent to which you believe them, [286] is a matter for your sole determination.

We start out in every case with the presumption that when a witness comes up and sits in this chair, he is going to tell the truth. However, that presumption may be rebutted by many different factors. It may be rebutted or negated by the manner in which the witness testifies; by the demeanor of the witness on the witness stand; by whether or not he has contradicted himself or whether or not he has been contradicted by other witnesses; by his relationship to the Government on the one hand or to the defense on the other hand. All of these factors you may consider in determining the question as to whether or not the witness was telling the truth.

And if you find that a witness has sworn falsely in any material fact, then you are justified in not

accepting and rejecting all of the witness' testimony. You should not, however, do that unless the matter in which you find that the witness has testified falsely is a material matter and reasonably bears upon the question of the guilt or innocence of the defendant.

You should disregard any testimony that the Court has stricken out or any testimony given in answer to a question where an objection has been sustained to the question.

The attorneys in this case have argued the case to you. That is their right, and, indeed, their duty. If, however, you should find any variance between the testimony as you recall it [287] as having been given by the witnesses and the testimony as stated to be the testimony by the lawyers in their arguments, then you should disregard to that extent what the lawyers have said and only consider the testimony as you recall it as having been given by the witnesses themselves.

The defendant has taken the witness stand and in this case has testified in his own behalf. That being so, you will consider his testimony according to the standards that I have given you that apply to all witnesses. In addition, in the case of the defendant, you may also consider the interest he has in the case, his hopes and his fears and what he has to gain or lose by any verdict at your hands.

There have been witnesses testify whom we commonly speak of as character witnesses; that is, witnesses who have said that the reputation of the defendant in the community is good. You may con-

sider that testimony along with all of the other testimony in the case in determining the guilt or innocence of the defendant.

There is one other matter that I wish to speak to you about. There has been a reference made to the doctrine of circumstantial evidence. Since this is a case in which circumstantial evidence is involved, I propose to give you some brief advice on that subject.

In the law there are two kinds of evidence, generally speaking; there is what we call direct evidence and what we [288] call circumstantial evidence.

Direct evidence is evidence that is perceptible or observable or otherwise cognizable by the senses. If you see something, if you feel something, if you smell something or if you taste something, that is direct evidence because you have been able to recognize it by your senses. I raise this paper and you know that I have raised this paper because you have seen me do so and you say, "Judge Goodman raised that paper." That is direct evidence, your testimony that you saw me raise the paper.

Another type of evidence that we have is known as circumstantial evidence. That is not the direct evidence of the actual commission of an offense by an eye witness or something of that sort. It is factual matters that are not direct in their character, such as physical facts, documentary facts, scientific facts—things like the wire, the physical fact of the wire; that there was a wharf; a tag has been introduced in evidence; documents have been intro-

duced in evidence; presence of a person at a time and place has been presented in evidence. Those are all circumstances and they are generally considered to be, and they are generally regarded as, and described as circumstantial evidence.

Let me say to you that so far as the nature of evidence is concerned, there is no difference in the law between direct and circumstantial evidence. One kind of evidence is as good [289] as the other. The only important thing is that, whatever kind of evidence is in the case, before there can be a conviction of the defendant of a criminal offense, that evidence must bring about the conviction of the defendant beyond a reasonable doubt before it may be available. In other words, if you are convinced beyond a reasonable doubt by the circumstantial evidence that the defendant is guilty, that is just as good a verdict as a verdict that comes about by reason of the fact that you are convinced beyond a reasonable doubt by direct evidence of the commission of the offense.

In addition, in the case of circumstantial evidence, we also employ a rule or doctrine that where the evidence is circumstantial and is susceptible of the hypothesis of innocence as well as the hypothesis of guilt from the same facts, then there is not proof beyond a reasonable doubt and, hence, there cannot be a verdict of guilty.

You will recall that the indictment that I read to you in this case charges that the defendant on about March 6th, at San Francisco, wilfully stole from a wharf, with intent to convert to his own

use, goods which were part of a foreign shipment of freight and express, to wit: Five coils of used copper wire being shipped from San Francisco to Kobe, Japan, and worth more than \$100.00.

It is necessary, therefore, for the Government to have proved in this case beyond a reasonable doubt a number of things: [290]

First, it is necessary that the Government prove that the coils were a part of a foreign shipment—in this case a shipment from the United States to Japan. In determining whether or not this was a foreign shipment, you may consider the waybill or other shipping documents to be sufficient evidence, and in the absence of evidence to the contrary of the places from which and to which such shipment was made. There were shipping documents introduced in evidence in this case and, while I am not intending to direct your conclusion in any manner, I think that there is but very little doubt as to the fact that the evidence is sufficient to show that there was a foreign shipment of copper wire in this case. However, you are free to draw your own conclusions in that regard.

The Government also has to prove that the coils of wire that are in evidence here did not belong to the defendant. You have heard all of the evidence on that subject and you can draw your own conclusions from that.

The Government must also prove that the defendant took the coils or caused them to be taken from a wharf.

The Government must also prove that the coils

were part of this foreign shipment—this alleged foreign shipment. And you must also find, and it is your duty to determine that question, as to whether or not the Government has sustained its burden of proving that these coils were a part of the foreign shipment. [291]

The Government must also prove to your satisfaction beyond a reasonable doubt that the defendant, when taking the coils, if he took them, intended to convert them to his own use.

And then the last question you have to determine is whether or not the Government has proved that the coils were of a value of a hundred dollars or more. There has been evidence produced on the question of value. I don't think that should be a cause of too much difficulty on your part inasmuch as all of the testimony does not appear to me to bring the value down below a hundred dollars, although you may and are at perfect liberty to disregard any of the testimony on the subject of value and still conclude that the value of the coils was less than \$100.00.

If you should happen to come to that conclusion that the value of the coils was less than a hundred dollars, that would not prevent you from finding the defendant guilty, if you are satisfied beyond a reasonable doubt of his guilt according to the rules which I have given you; but, in the event that you do find a verdict of guilty and also conclude that the value of the coils was less than a hundred dollars, then in that event you should accompany your verdict of guilt with a finding that the value of the

coils was less than a hundred dollars. I am not indicating to you that you should do that; I am simply pointing out that in the event you should so determine, your verdict should be returned in that manner. [292]

Members of the jury, I think I have given you all the advice that I think can be helpful to you in this matter.

If you can agree upon a verdict, it is your duty to do so, if you can conscientiously reach a verdict.

The defendant in this case is entitled to the independent judgment of each one of you as to his guilt or innocence. You should freely consult with one another in the jury room. If any one of you should be convinced that your view of the case is wrong, you shouldn't be stubborn and you shouldn't hesitate to abandon your view under those circumstances. On the other hand, it is entirely proper to adhere to your viewpoint, whatever it may be, if, after a full exchange of ideas, you still believe that you are right.

The verdict of the jury in this case must be unanimous. You cannot find the defendant either guilty or innocent of this charge unless all of you in the jury room have agreed to the verdict and you should not return with a verdict to the courtroom unless in the jury room all of you have agreed as to the guilt or innocence of the defendant.

When you retire to the jury room to deliberate, you may select one of your number as foreman or forelady, as the case may be, and he or she will preside over your deliberations, will sign your ver-

dict for you when it has been rendered, and will represent you in the further conduct of the case in this court. [293]

We have prepared a form of verdict for you. It is a very simple form. It reads:

“We, the jury, find Edgar Harold Teague, the defendant at the bar (blank) as charged in the indictment.”

In the blank space you will write the words “guilty” or “not guilty” in accordance with the decision which you reach, and your foreman will sign that verdict and that will be the verdict of the jury.

After you have retired to deliberate and have organized and have selected a foreman, if you wish to see any of the exhibits in the case, you may send word through the bailiff and I will see that they are sent to you.

Does either side have any suggestions or corrections or exceptions?

Mr. Petrie: The Government has none, your Honor.

The Court: The defense?

Mr. Roos: No, your Honor.

The Court: Very well. Ladies and gentlemen, you may retire and consider your verdict.

Certificate of Reporter

I (We), Official Reporter(s) and Official Reporter(s) pro tem, certify that the foregoing tran-

script of 288 pages is a true and correct transcript of the matter therein contained as reported by me (us) and thereafter reduced to typewriting, to the best of my (our) ability.

/s/ W. A. FOSTER. [294]

The United States District Court, Northern
District of California, Southern Division

No. 36232

UNITED STATES OF AMERICA,

vs.

EDGAR HAROLD TEAGUE,

Defendant.

Before: Hon. Louis E. Goodman, Judge.

PROCEEDINGS

October 10, 1958

Appearances :

For the United States:

BERNARD PETRIE, ESQ.

For the Defendant:

LESLIE ROOS, ESQ.

I, Lois Bagley, Official Reporter Pro Tem, certify that the 10 pages of transcript immediately following are a true and correct transcription of the mat-

ter therein contained, as reported by me and thereafter reduced to typewriting, to the best of my ability.

.....

The Clerk: United States versus Edgar Harold Teague, Motion for New Trial, and for Judgment.

Mr. Roos: May it please the Court, this is a Motion [295] for Judgment of Acquittal under Rule 29, rather than a Motion for New Trial.

Your Honor will recall the motion was made after the jury was discharged, and set over for this morning for argument. The motion is based on the primary ground that no corpus delicti was proven in this case. As your Honor knows, the question of necessity of proving corpus delicti, that a crime has in fact been committed, is a question of substantive law.

This man essentially is charged with theft from the wharf. The proof of any theft, whatsoever, having occurred is entirely lacking. The five coils of copper wire, which were found a day or so after the alleged theft in possession of the defendant—all the witnesses ever said was that this wire was presumed to be wire that was part of the shipment in question. It could have been. A tag was found among the wire, which was acknowledged as being a tag that was part of the shipment. However, it isn't up to the defense to explain how the tag got there.

If your Honor please, five coils of wire were found, which prosecution charges were stolen from

a particular shipment. However, no proof was ever made, and there was no evidence whatsoever that anything was ever stolen from that shipment. 186 coils were tendered to the dock, and 186 coils of wire were taken off at Kobe, Japan. There is absolutely no numerical discrepancy. If we accept the rather incredible testimony [296] as to the weight of these 186 coils when they were checked out of the metal company and supposedly weighed—to say exactly, I forget—20,000 some-odd pounds, right to the thousandths—it is incredible, and the 186 coils did weigh an exact 27,000 pounds, whatever it was. If we accept that weight as accurate, when the 186 coils were weighed in Japan the weight was 499 pounds less; then the shortage was an odd number in San Francisco. So there is a weight discrepancy of 499 pounds. That doesn't prove these coils were stolen from that shipment in this case. Here we have five coils and very strangely two different weights, quite a ways apart, for the five coils. The FBI says they weighed in the Richmond yard 531 pounds. When we had them weighed, your Honor recalls the certified weight was 460 pounds.

It is really immaterial what they weighed, as long as they didn't weigh 499 pounds. Unless they weighed 499 pounds, there is no proof they came from this shipment, even on a theory of weight discrepancy. So there is absolutely no proof that the five coils of wire the defendant is charged with stealing were actually stolen by the defendant or anybody else. To prove *corpus delicti*, as your Honor knows, they must prove the crime was com-

mitted, must prove something was stolen. They don't have to connect the defendant with the crime, but they have to prove the crime was committed.

Not only is there no proof that theft occurred here, either in number of coils or weight discrepancy, but no one [297] claimed theft. FPA doesn't say somebody stole the wire; the Federated Metal doesn't say somebody stole the wire; the consignee in Japan, the actual purchaser, doesn't say it was stolen—the consignee in Japan hasn't said, "Some of our wire was stolen." Here is an essentially alleged theft with nobody claiming the property was stolen. No complaint witness comes in and says, "Somebody stole my automobile" or "Somebody stole my wire." There is no proof that a crime was committed and no one claiming that a crime was committed, that the property was stolen.

I think, from the evidence and for the reasons set forth, there is complete failure to prove *corpus delicti*, that a crime was committed, and I move on that ground for Judgment of Acquittal.

The Court: The defendant made a similar motion at the conclusion of the evidence in this case, did he not?

Mr. Petrie: Yes, your Honor.

The Court: And I denied it.

Mr. Petrie: Yes, your Honor.

The Court: Well, I was satisfied at the time, and I see no reason to change that. There was sufficient evidence to go to the jury. I think all that is addressed to the weight of the evidence. One could argue either way on the question you have been

discussing; and the jury found in accordance with the allegations of the indictment.

Mr. Roos: I don't think you can argue either way. [298] The evidence is uncontradicted. It isn't going to the evidence. I am making it as a matter of law.

The Court: The weight of the evidence, which you say is uncontradicted, still was a matter for determination of the jury.

Mr. Roos: To prove a crime, you have to prove a crime was committed.

The Court: I think there was ample evidence, circumstantial, it is true, but that does not tend to lessen the verity of the course of action as to its sufficiency—the fact that the evidence is circumstantial in nature. The argument that you make that there is no *corpus delicti* because nobody claims the property was stolen——

Mr. Roos: And there is no proof that property was stolen.

The Court: I don't agree——

Mr. Roos: No proof that the property——

The Court: I think there is ample evidence to connect this with the defense. Anybody might decide not to put a claim against the company—there might be a thousand things to cause someone not to make a claim against a carrier——

Mr. Roos: That is not my main argument, your Honor. My main argument is, if there was ample evidence that a crime was committed, there is ample evidence to connect the defendant with it. He had opportunity, as did others, and the property [299]

was established to be in his possession. Yes. But there is no evidence to show the property in his possession was stolen, and particularly stolen from this shipment.

The Court: That argument I don't think has any weight, if I was deciding the question. However, that was still a matter for the jury. The circumstances were such, in my opinion, there was ample evidence to go to the jury, and then it became for the jury to determine.

I will deny the motion, as I did previously, on the motion urged by the defendant on the same grounds.

Mr. Roos, I wonder if you would have the defendant step up.

I have a report from the Probation Officer in this case.

The Defendant: Yes, sir.

The Court: As usual with defendants, detailed information concerning this defendant's background, and all the various matters that are presented in reports of Probation Officers, aid the Court in trying to determine what disposition to make of the case.

The employment record of the defendant, the family record, education, religion, and the fact of military, naval or marine service, and all matters that are important, aid the Judge in determining disposition of the case.

This is the first offense of this man. The [300] amount involved is not great. I would listen with considerable sympathy to an application for pro-

bation were it not for one thing that the Probation Officer mentioned, which is important, so far as the Court is concerned. Probation is for those who are contrite, and those who make full statements concerning the nature of the offense, and those who, with that background or attitude, are amenable to the probation process. That is not true in this case.

I read the defendant's own statement. I might tell you that I received some information—not information, but a plea, as very often happens in cases of offenses, where you get letters written in, statements made by friends or business associates or others—and I received a communication from an important Labor leader, concerning this man; and what he said to me made it clear to me that this is a case where you and the defendant and the Probation Officer should, perhaps, have further discussion concerning this case.

I say to Teague directly and with no equivocation, you better talk to your attorney and to the Probation Officer and, perhaps, to some person high in the circles of the Labor organization, as to whether or not you have done everything that could make it possible for probation in this case. I say to you frankly—I may be wrong—you have not made a contrite statement. I am not suggesting that you say something that is not true in order to evoke aid of the Court, but there are factors about this case that lead me to believe you could make a more accurate statement than the one you made in the report you gave to the Probation Officer concerning your case. Maybe the Court is wrong in the matter.

I don't think I am, but we all can make mistakes. I would listen much more favorably to a request for probation if there were a more complete statement made by the defendant, which would indicate he is amenable to the probation process.

My suggestion goes to the lawyer: If it is worthwhile to give a little further thought to a statement from the defense, do that. And I don't say you have to. There is no force involved. It doesn't make any difference to me. I am here to perform my job. Hundreds and hundreds of cases have gone before and will follow.

I think, therefore, it might be well to continue this matter for judgment for a few days, and you gentlemen give further consideration to what the defendant might do to make himself more amenable to the probation process.

Mr. Roos: May I say this? I don't want—was the information you received in favor or against?

The Court: The information I received was against—

The Defendant: The only detrimental I received was from Mr. Adams, Captain of the Lodge, AFL.

The Court: I am not referring to that. I am referring—it was further in line with the defendant's statement with [302] respect to this offense.

Mr. Roos: May I say in that connection, I discussed that with the defendant many times before and since this trial. I told him if he was guilty of the offense to tell me, and I felt certain the U. S. Attorney might accept a plea to this. He at all times insisted he was not guilty. I said I would not

permit him to plead guilty to something he insisted to me he didn't do. I think the same applies to what Mr. Adams tells me he insisted to him; that he didn't. I told him not to tell Mr. Adams he was guilty of the crime if, in fact, he was not. I don't think——

The Court: Are you going to decide the matter now?

Mr. Roos: No. I just wanted to tell your Honor my position. When you stated I should discuss it, I thought——

The Defendant: May I say something?

The Court: I would rather you don't now. I would rather you talked it over——

The Defendant: Can I say something, sir?

The Court: Well, don't say anything that is going to commit you.

The Defendant: No.

The Court: You are kind of a stubborn fellow. I noticed in some of the reports I got, you—to use the language of the docks—you have somewhat of a reputation of throwing your weight around. Don't throw it around at the present time, [303] when I am trying, if possible, to do something for your own good. This matter can go over, and you can see some of your friends, who must have had some communication from you, because there was a plea made to me in your behalf. So why don't you do that? And see where you want to go from there.

Suppose we continue Judgment—today is Friday—suppose we continue the Judgment until next Wednesday. That will give you time to talk things

over. Maybe something may come from your friends, your lawyer or the Probation Officer, or anyone else; because after the Court—until there has been a finding of guilty, the Court's mind, ears and eyes should be open to anything, any information, that is helpful to the Court in disposing of the case.

Will that be all right? Wednesday morning?

Mr. Roos: I think so.

The Court: We will continue the matter until that time. [304]

October 15, 1958—10:00 o'Clock A.M.

The Court: I continued this matter for judgment last Friday until today. Is there anything further that the Probation Officer or counsel wish to report?

Probation Officer: Your Honor, apparently there is no change in his attitude.

The Court: Is there anything further you wish to say?

Mr. Roos: The defendant followed your Honor's suggestion, made to me in chambers last Friday, and it is my understanding that—I don't know, I wasn't present at the conference—it is my understanding from Mr. Teague that there is no change in his position regarding the offense, and he told me, and I told him I agreed with him, he should not say he was guilty of something he was not guilty of, and the only person who really knows is Mr. Teague.

The Court: I think the Court made quite clear

at the last hearing the reason for suggesting a continuance in this matter.

Under the circumstances, I don't feel that this is a proper case for probation. The defendant's attitude is not one that is conducive to the granting of probation, nor does it demonstrate the ability to live up to the terms of probation.

Under the circumstances, the Court will impose judgment in this case, and I will do so under the provisions of Public [305] Law 85, approved by the president on August 23rd, 1958, known as 72 Statute 834, which gives the Court the power to split the judgment and suspend a part of the sentence in a one-count indictment. This statute provides for a maximum penalty of \$5,000 fine and/or ten years in prison.

It will be the judgment of the Court that the defendant pay a fine in the sum of \$1,000, and I will sentence him to one year in prison and suspend eleven months of the sentence and place him on probation for the remaining eleven months of the sentence. That means that the defendant will pay a fine of \$1,000 and serve 30 days in jail, and then he will be on probation for the remaining eleven months of the sentence.

Mr. Roos: Would your Honor, at this time, consider making an order fixing bail pending appeal?

The Court: Well, you can make an application. Do you wish to make it now?

Mr. Roos: Yes, your Honor; I am making it now.

The Court: Offhand, Mr. Roos, I think there

was nothing but a factual question involved in this case, and I don't believe I could certify to the fact that this would be a good-faith appeal.

Mr. Roos: I think it is certainly a good-faith appeal, your Honor, on the ground, particularly, of two grounds that I can think of offhand, the one that I argued for a directed verdict of acquittal, that there was legally no corpus delicti [306] proved in this case; and, secondly, on what I contended was error in admitting the weighmaster's certificate in Japan, which was hearsay and no foundation was laid for its admittance, and without that weighmaster's certificate in Japan, there could have been no proof any weight discrepancy in this material.

As I understand the law now, since the amendment to the rules, the only finding necessary to be made on the question is that the appeal is not for purposes of delay or bad faith, and I assure you that that is not the case.

The Court: Well, Mr. Roos, I assume you are asking for bail on appeal because you intend to file notice of appeal?

Mr. Roos: Yes, sir.

The Court: If you do file notice of appeal, you have now applied for bail, I will deny the application for bail on appeal, but I will grant a stay of five days so that you may make your application to the Court of Appeals.

[Endorsed]: Filed November 19, 1958, U.S.D.C.

[Endorsed]: Filed December 4, 1958, U.S.C.A.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO
RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, hereby certify the foregoing and accompanying documents and exhibits, listed below, are the originals filed in this Court in the above-entitled case and constitute the record on appeal herein as designated by the attorney for the appellant:

Indictment.

Minute Order—Arraignment.

Minute Order—Plea.

Minute Order—Motion for Production of Documents and Suppression of Evidence.

Minute Order—Trial.

Minute Order—Trial.

Minute Order—Trial, Verdict of Guilty, Motion for Judgment of Acquittal or in Alternative for a New Trial.

Minute Order Denying Motion for Judgment of Acquittal.

Verdict.

Judgment and Commitment.

Minute Order—Sentence.

Notice of Appeal.

Designation of Record on Appeal.

Counter-Designation of Record on Appeal.

U. S. Exhibits 1, 2, 3, 4, 5, 6, 7-A, 7-B, 8, 9, 10.

In the United States Court of Appeals
for the Ninth Circuit

No. 16270

EDGAR HAROLD TEAGUE,

Defendant-Appellant,

vs.

UNITED STATES OF AMERICA,

Plaintiff-Respondent.

ORDER

On Motions for Admission to Bail, and for Stay
of Payment of Fine, Pending Appeal

Before: Popé, Hamley, and Hamlin,
Circuit Judges.

Appellant may be admitted to bail pending disposition of the appeal upon filing in the registry of the United States District Court for the Northern District of California an appearance bond in the sum of One Thousand Dollars (\$1,000), approved as to form and execution by a judge of that court.

That portion of the judgment and sentence under review directing payment of a fine of One Thousand Dollars is stayed pending disposition of this appeal.

/s/ WALTER L. POPE,
Circuit Judge;

/s/ FREDERICK G. HAMLEY,
Circuit Judge;

/s/ O. D. HAMLIN,
Circuit Judge.

[Endorsed]: Filed October 20, 1958.

[Title of Court of Appeals and Cause.]

POINTS UPON WHICH DEFENDANT-
APPELLANT INTENDS TO RELY

1. Insufficiency of the evidence to justify the verdict.

2. Insufficiency of the evidence to prove the corpus delicti.

3. Erroneous admission into evidence of plaintiff's Exhibit No. 8 over objections of the defendant.

4. Erroneous denials of defendant's motions for a judgment of acquittal at (a) the close of plaintiff's case, (b) the close of the evidence, and (c) after discharge of the jury (Rule 29, Rules of Criminal Procedure).

5. Improper argument to the jury by the Assistant United States Attorney.

/s/ LESLIE L. ROOS,

ROOS, JENNINGS & HAID,
Attorneys for Defendant-
Appellant.

Receipt of copy acknowledged.

[Endorsed]: Filed December 9, 1958.

[Title of Court of Appeals and Cause.]

SUPPLEMENTAL STATEMENT OF POINTS
UPON WHICH DEFENDANT-APPELLANT
INTENDS TO RELY

6. Erroneous admission into evidence of conversations between defendant and Robert G. Barthol over objections of the defendant.

/s/ LESLIE L. ROOS,

ROOS, JENNINGS & HAID,
Attorneys for Defendant-
Appellant.

Service of copy acknowledged.

[Endorsed]: Filed December 16, 1958.

